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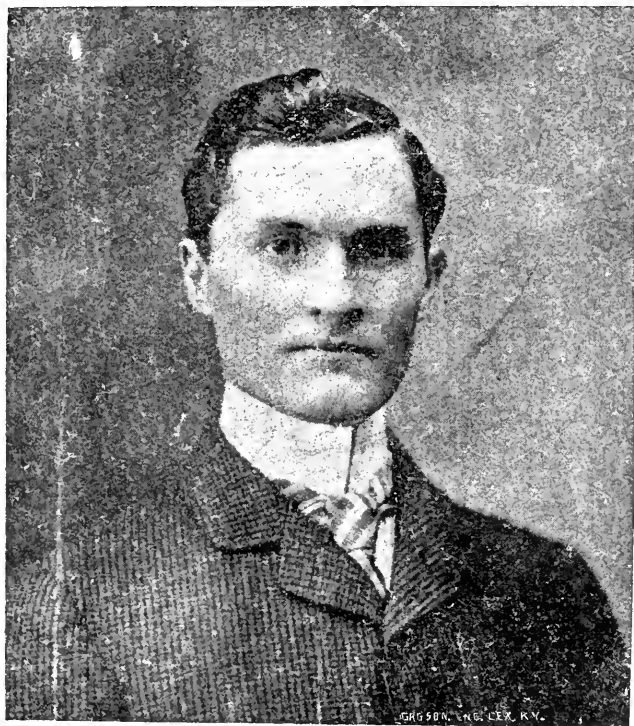








# GREAT SPEECH OF **Caleb Powers**



BEFORE THE JURY THAT SENTENCED HIM TO DEATH UPON THE  
CHARGE OF BEING AN ACCESSORY BEFORE THE FACT  
TO THE MURDER OF WILLIAM GOEBEL.

## OBSERVATIONS ON THE TRIAL

AND INCIDENTS OF THE DELIVERY OF THIS MASTERLY ADDRESS,  
BY LLEWELLYN F. SINCLAIR, OF COUNSEL FOR POWERS

PRICE 25 CENTS.





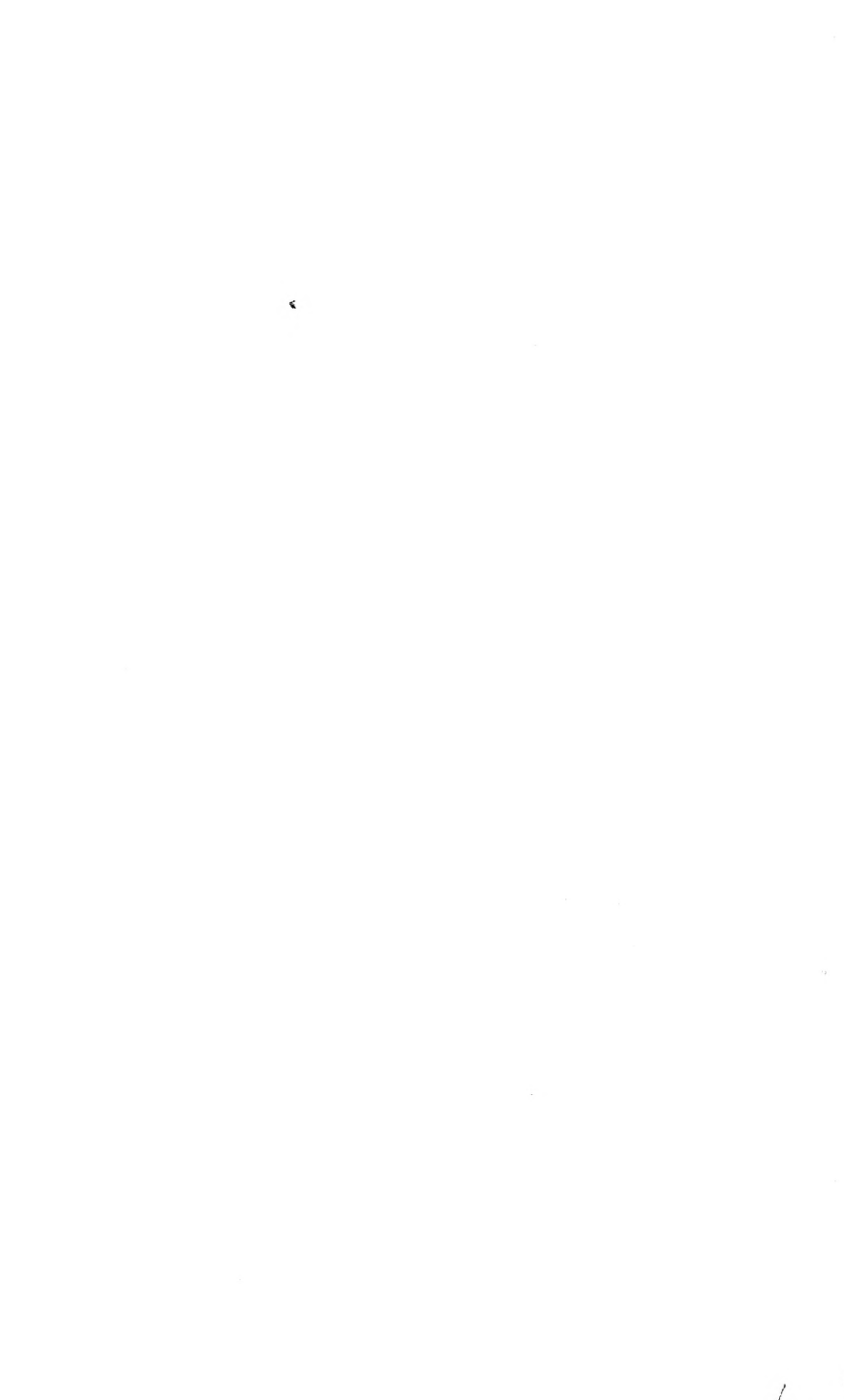
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Copies of this book may be secured by addressing

**K. F. BRADLEY, Georgetown, Ky.**



# **OBSERVATIONS ON CALEB POWERS' TRIAL**

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**Speech in His Own Behalf, Before the Jury That Sentenced Him to  
Death on the Charge of Being an Accessory Before the  
Fact to the Murder of William Goebel.**

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**By Llewellyn F. Sinclair of Counsel for Caleb Powers.**

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The reading public, not only of Kentucky, but of the nation, is familiar with the tragic murder of William Goebel in the State house yard at Frankfort on January 30th, 1900, and the promiscuous indictment of persons of high and low degree, as principals and accessories before the fact in the commission of this crime. The reading public of the State and nation is also familiar with the long drawn out legal battle, and the frequent trials of numerous persons accused of having had some sort of connection with the murder of William Goebel. The bitterness, hate and passion growing out of this horrid crime, the partisan politics necessarily involved in the testimony presented on the trial of the parties accused, inevitably tends to transform the court-room into a forum for the exploitation of all the angry feeling aroused during the memorable campaign preceeding the assassination of Mr. Goebel. Men, and women too, for that matter, who desire to be reasonable can understand how unfortunate for the accused these facts must be. The calm thoughtful people of Kentucky and the nation, can understand what an unequal fight these accused persons have been compelled to face. To recapitulate let us outline briefly the conditions surrounding these trials.

The parties accused, to commence with, are charged with killing the Democratic leader of the State, the motive alleged being one of politics, the accused parties being Republicans of a more or less degree of prominence in the public affairs of Kentucky. The parties are indicted, in a court presided over by a Democratic judge, the officers being Democrats, they are tried before a Democratic court, with Democratic officers, and before Democratic juries. This is not said in a spirit of criticism or censure, but in all candor we submit to any reasonable person whether these facts are calculated to prejudice the trial of the accused. That these things may be perfectly understood we desire to submit a further observation. There are Republicans, qualified for jury service, available in these trials, of equal standing

with their Democratic neighbors. This cannot be gainsaid. Suppose a jury was selected made up of six Republicans in politics—men that are competent and qualified for jury service, possessing character and standing as citizens equal to that of any citizen in the State of Kentucky for that matter, and then there were six other jurors of equal standing of the Democratic persuasion, does any one doubt that a jury so composed would never agree upon a verdict? If this conjecture be correct, a further question naturally arises and it is this: If a verdict of conviction could not be obtained before a jury of mixed politics is a verdict rendered by a jury composed of Democrats very conclusive the guilt of the accused? If as the gentlemen contend on the side of the prosecution, the evidence of the guilt of these persons is so conclusive, for the purpose of silencing the contention of the defense and the defendants themselves, why don't they say to the trial court: "If your Honor please, the accused has made frequent complaint of the fact that the jurors in these cases have been composed of men who are Democrats in politics. I desire to forever silence this objection of the defense, believing the evidence of the prosecution sufficient to convict the defendant before any jury made up of honest men, without reference to their politics, therefore, I will ask your Honor to instruct the sheriff to summon a venire to try this case from each political party, requesting that good, sober discreet citizens be so summoned." Would not fairness and justice be subserved by such a course, and would not a verdict rendered under such circumstances appeal to all persons with far greater weight than those returned in the past. It is not an answer to say that the letter of the statute does not require such practice. It has been done by some of our greatest judges. Judge Gresham of the Federal Court, several years ago on the trial of several Democrats in Indianapolis accused of a political offense, directed the marshall to impanel a jury of mixed political faith; the same thing was done by Judge Cochran of the Federal bench on the trial of several Democrats, charged with election offenses at London, Kentucky, only a year or more ago. It does not make any difference whether the letter of the statute requires such a course or not, equity, justice and fairness demand it, when one is accused of an offense in which there is so much of politics involved, and all men, wherever jurisprudence is known, throughout the world, will applaud and approve the judge that stands for such a policy.

A celebrated authority has said that "The history of the human race is made up mostly of their errors and misfortunes" If this be true "The philosophy of history" as Voltaire was wont to say, deals with error in the abstract and concrete. And it might not be improper to say that the things here set down, whatever the result may be, when the end of these trials shall have been reached, will in some measure as history subserve the interest of truth and justice in the

future. When the storms of passion and prejudice shall have subsided and the clear sunlight of truth shall have penetrated the crevices of falsehood, let us hope that the wisdom of deliberation and fairness may to some degree be advanced by a perusal of the story of the unhappy tragedies growing out of the murder of William Goebel. We say tragedies advisedly for the covert crime appalls, while to the minds of many the victims of unreasoning hate causes awe. Who will say that in future years, when the zealous participants in this unfortunate drama shall have passed away, that this crime and those accused of committing it will not take their place alongside the victims of that miserable coterie of perjurers who appeared immediately after the mysterious death of Godfrey and the circulation of the story of the "Popish Plot." Oats, Corstair, Dangerfield and others of their ilk, repeated with apparent plausibility the murderous schemes of Roman Catholics in connection with these alleged crimes and a frenzied public stood aghast with indignation. (See Macaulay's England, Vol. 1, page 216-221).

Another parallel will be found in the alleged Georges' conspiracy to murder Napoleon Bonaparte, which impartial history shows to have had its origin in the political exigencies of the times, from Napoleon's standpoint. (See Bouinenne's Napoleon, page 306-319). The judicial murder of the Duke d'Engheim, traced directly to the Tuleries, would have submerged in eternal infamy the name of any one other than he who could "cross the Alps, mingle the Eagles of France with the Eagles of the Craigs," and render French valor glorious forever on the fields of Austerlitz.

Coming on down to a later period, we see again an instance of unrestrained fury directed against those persons accused of the assassination of President Lincoln. The world knows now to a certainty what it refused to believe at the time this crime was committed. Mrs. Surratt and other innocent persons were convicted. Arnold, O'Laughlin and others were thrown into prison for life, for no other reason than that it was shown these persons had on one occasion entered into an arrangement with Booth looking to the "kidnapping" of the President.

Then again there is the Dreyfus trial. One will look in vain to the history of any criminal trial in all the past when the person accused was charged with a political offense or a crime involving politics, that the truth was not obscured and confused by the passions and prejudices of the hour. But out of all these errors and misguided zeal there will come progress; for, suffering and misfortune is "the badge of all our triumphs"

The speech made by Caleb Powers in his own behalf before the jury that tried him in Georgetown, in August, 1903, should be read by every citizen willing to accord a hearing to those that are accused of

crime. Those that read this calm examination of the testimony introduced against him will not be impressed alone with the novelty of a defendant arguing his own cause. The elimination of self which Mr. Powers studiously observed throughout his argument, presenting the law and the facts as though he appeared in behalf of a client having no claim upon him other than his professional services, will naturally suggest to the mind of the intelligent reader as showing a remarkable spirit of fairness on the part of this young man who has languished in jail for more than three years.

Perhaps it would not be amiss just here to note some of the incidents occurring during the delivery of Mr. Powers' speech.

Sometime prior to the closing of the testimony the newspapers, through the tireless energy of industrious correspondents, secured the information that the defendant would make a speech in his own behalf. The public, generally, was deeply interested in hearing this speech. Nor was this anxiety to hear Mr. Powers confined alone to those who were his friends and believed in his innocence. Friend and foe alike were eager to hear from his own lips the things he desired to say in behalf of his life and liberty.

The arrangement between the attorneys for the state and the defense provided for three speeches for the State and four for the defense. Mr. Powers desired to close his case. It happened that the argument for the State preceding Mr. Powers' speech was completed at 5 o'clock, the adjourning hour of court in the afternoon of August 27, which required Mr. Powers to begin at the night session. The weather was intensely warm. Long before the convening hour the spacious court-room was packed to suffocation with men and women representing every calling in life. The matron and maid, beauty, wealth and poverty had congregated to witness a scene the like of which has rarely occurred in the history of all the past. Mr. Powers came in accompanied by the jailor and retired with his attorneys to the jury room. He was neatly dressed in a light suit of clothes, wearing a white Alpine hat. At 7:30 o'clock p. m. court was called to order. The judge directed that the argument proceed. Mr. Powers emerged from the jury room, with head erect, dauntless and brave as he pushed his way through the mighty throng and began his speech. Composed and calm, in a low tone of voice, amid the pall and silence of that vast audience that hung with bated breath upon his every word, the youthful prisoner and orator proceeded with apparent unconsciousness of the gravity of the occasion. He spoke until 9:30 o'clock, court adjourning until the following day. The interest aroused by Mr. Powers first appearance before the jury was increased between the adjournment at night and the convening of court the next morning. Long before the hour of convening of court the succeeding day, the court-room was jammed with sweltering humanity, all bent upon hear-

ing every word the defendent should say in conclusion of the splendid speech began the previous evening. Anxious humanity presented themselves for admission hours before the Court-room doors were opened. One sick lady left her bed against the advise of her physicians, saying: "I can be sick any time, I may never have an opportunity of hearing Mr. Powers again." Many people did not leave their seats during the noon adjournment. Some had lunch and some had none. At every session of Court during the argument of Mr. Powers hundreds were turned away after the Court-room was filled to its utmost capacity. Mr. Powers resumed his argument at 9 o'clock, speaking until noon; beginning again at 1:30 o'clock, he concluded at 3:30 p. m. having spoken nearly six hours in all. That the public may have an opportunity to read this masterly address, away from the scenes and circumstances under which it was delivered, we give the speech herewith in full:

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### **Mr. Powers' Speech.**

May it please the Court, and you also, gentlemen of the jury: I know that you must be tired listening to argument, but if my strength and this intense heat will permit it, I desire to say a few words in my own behalf and concerning whose life and whose liberty, you have taken upon yourselves a solemn obligation to deal. In doing so, I exercise one of the privileges which our law-makers in their wisdom, have vouchsafed to every person accused of a crime within the confines of our Commonwealth. I would not, however, take advantage of this provision of our law, but for the fact, that for over three long years I have been forced to lie in the jails of this State, classed as a criminal, branded as a murderer and denounced an assassin.

I have borne in silence, and with what fortitude I could, these grave charges, together with two adverse verdicts, at the hands of my fellow-countrymen. I now feel that I owe it to myself to be heard. Over three years ago, I was torn from a high official position to which I had been elevated by the people of this great Commonwealth; thrown in jail and charged with the commission of an atrocious and cowardly crime. The Legislature of our State, in the excitement of the hour, and actuated by motives of hatred and revenge, appropriated \$100,000 of the people's money with which to prosecute me, \$25,000 of which sum was set aside for the investigation of clues; in other words that amount was to be paid to detectives to furnish the needed proof. In addition to that, a large sum was offered and hung up as a tempting morsel for my conviction, right or wrong.

With such inducements as these, and under all circumstances, and surroundings in this case, is it any wonder that Weavers have wandered from the distant peaks of Colorado to get their slimy

hands into that filthy sum? Is it any wonder that perjured scoundrels of the brand of Noaks and Anderson found their way to the witness stand during my trials, and swore to prepared and infamous falsehoods against me? Is it any wonder that weak and base humanity of the character of Golden and Culton began to swear and continued to swear for immunity?

Is it any wonder that the assassin hearted Cecil, after having wandered this weary world around, from Kentucky to Kansas, from Kansas to California, from California to Kansas and from Kansas back to Kentucky, should finally find his way to the home of the Prosecuting Attorney in this case; there given a comfortable night's lodging—"par nobile fratrem;" from there be taken before the Grand Jury the following morning to tell such a story as would continue to him his liberty under the forms of law? Is it any wonder that the weak and villainous Youtsey, after having spent more than two years in the penitentiary of this State, should emerge from that living tomb, when he sees, or thinks he sees, through his testimony a ready chariot to the green and inviting fields of freedom? We should not be surprised at such happenings, they are the natural outgrowth of such conditions and inducements.

Since the very day of my arrest, my conviction in this case, has been both a pecuniary and a political necessity. It is more so to-day than it has ever been. The prosecution cannot now well afford to admit that they have hounded to the earth for three years an innocent man. They cannot now well afford to admit that they did me wrong, when I was deprived of my office and thrown in jail. These would be bitter words for them to be forced to utter: "We have charged this young man with murder wrongfully; we have torn him from an office of trust and honor; we have lodged him in jail; we have carried him from one bastille of this State to another, in chains and irons; we have thrown him behind gnawing bars of prison life; we have forced him to stay in the same steel cages with worthless negroes and to have them for his daily companions; we have inflamed the public mind against him through a servile press, with hideous stories of an awful conspiracy in which we believed him to be implicated. We have tried him in our courts by his enemies, politically, and we have convicted him, but in all that we have been mistaken, in all that we have done wrong." It is true that the prosecution is in the confession business but they are not going to make such a confession as that; nor, will they permit you to bring in a verdict of "not guilty" in this case, if it is within their power to prevent it.

We have heard a great deal said during the progress of this case, and especially by Col. Hendricks, about the prosecution having no interest in the conviction of an innocent man. He said that the Commonwealth could have no sort of interest in my prosecution unless I



was guilty of that with which I am charged. And for the purpose of adding plausibility to their argument, they have said that Arthur Goebel would not, for his right arm, lend aid or encouragement to the prosecution in this case unless he knew beyond all doubt, founded upon reason, that I am guilty of that with which I am charged; and Mr. Franklin has said upon former trials of this case, and I presume he will say upon this one, that he is a sworn officer of the law, gentlemen of the jury, that no filthy lucre of any kind lingers in his pocket to swerve him from his duty one way or the other, that he is doing his duty to his country, his conscience, and to his God. I say, men, we should not be surprised at such pleas and speeches on the part of the prosecution. This is not the first time in the history of these cases that the life of an innocent man has been asked by these gentlemen.

In the trial of poor old Berry Howard, over at Frankfort, Mr. Franklin called him a monstrous, murderous, frozen-hearted assassin, and asked that his life go out upon the scaffold. Mr. Franklin was doing that in his alleged official duty, and he is prosecuting me now in his alleged official capacity. Mr. Franklin was mistaken about the guilt of poor old Berry Howard because the jury said in that case: "We the jury agree and find the defendant not guilty." Mr. Arthur Goebel was present upon that occasion and was lending aid and encouragement to the prosecution. He, no doubt, believed Berry Howard was guilty of the murder of his brother. There is no doubt he believed it. He was relying upon the word of this weasel-eyed wretch Henry E. Youtsey. Youtsey had told him on the very day of his arrest that he had let Howard into the private office of the Secretary of State with Dick Combs, Jim Howard and others. Mr. Goebel believed Henry E. Youtsey and upon that belief in Youtsey's story he had an innocent man dragged from the mountains of Kentucky and put upon trial for his life.

And in the trial of Capt. Garnet D. Ripley, the papers had it that Mr. Franklin made one of the most powerful efforts of his life, that he spoke for four long hours and asked the jury to take the young man's life from him.

Mr. Arthur Goebel was present aiding in that prosecution. In the belief of the guilt of Capt. Ripley Mr. Franklin was mistaken and Mr. Arthur Goebel was mistaken because the jury in the case of Capt. Garnet D. Ripley said: "We, the jury, agree and find the defendant not guilty." And they sent him to his home. So this is not the first time, men, in the history of these cases that the prosecution has been mistaken and Mr. Goebel has been mistaken in his pursuit of a man he believed to be implicated in the murder of his brother. The truth is, men, that the prosecution in this case is most crazed for a verdict of

guilty. They feel that a verdict of acquittal at your hands would break the backbone of their alleged conspiracy, and for this to be done at this particular time, with Taylor and Finley, yet at large and yet to be tried, and with the coming State campaign on hand, would be a serious blow to the hopes and the purposes of the prosecution. They keenly appreciate the necessity for a conviction, and in order to accomplish it, men, they have stopped at hardly anything in this case, but upon the contrary they have stooped to a great many things. They have attacked my integrity in the open; they have trampled under foot my liberty; they have tried to grind my honor into atoms, and they have even gone to the extent of attacking the integrity of you gentlemen in the back and by stealth, and at the same time professing friendship.

Leaving out of view that fact that it is always unpleasant to sit in judgment upon sacred rights of one of your fellow men, your position in this case from another view-point is by no means an enviable one. Truth to speak, men, they are relying more upon your political affiliations for a verdict of guilty than they are upon the law and the testimony, and the oath you have taken to give me a fair trial. I think I can make that clear to you.

The county of Bourbon, in 1896, gave McKinley a majority of over four hundred votes, and in the campaign of 1899 it gave Taylor a majority. Taking the McKinley vote as a basis, had there been no distinction made on account of politics, there ought to have been serving on this jury about seven Republicans and five Democrats. And yet in the face of this fact, and divers others like unto it, the prosecution maintains that politics has nothing to do with the trial of this case. Mr. Campbell and Mr. Hendricks have gone to the extent of saying that whatever politics have been injected into this case, have been injected into it by the defendant. Injected into it by the defendant! What interest, pray tell me, has the defendant in injecting politics into this case? If there is one thing more than another in which the defense is interested in, it is, in keeping politics out of this case. If there is one thing more than another in which the defense is interested in, it is, that this case be tried in the spirit of truth and inquiry and not in the spirit of political hatred and revenge. What could it profit the defense, pray tell me, to draw the bow across the strings of political passion when eleven of those strings are Democratic strings and, possibly one, a Republican string? Politics has been injected into this case, men, not by the defendant; but by the prosecution, and I think I can make that clear to you gentlemen.

The statutes of our State provide that it is the duty of the jury commissioners to place within the jury wheel the names of sensible, sober, discreet house-keepers of the county, over twenty-one years of age, and residents in different portions of it. These are the qualifi-

cations and the only qualifications that jurors are required to possess; and when the sheriff is sent out over the country to select men to do jury service in this, or any other case, these are the qualifications and the only qualifications that the jurors are required to possess. ~~And~~ when sheriffs are sent out, as in this case, to select men to do jury service, these are the qualifications and the only qualifications that the jurors are required to possess. There is no provision in our law which says that Democrats only shall do jury service. There is no provision in our law which says that Republicans shall not do jury service. The laws of our country do not take into consideration the politics of the juror. That being true, men, there must be some reason why there are eleven Democrats doing jury service in this case and possibly one Republican. There must be some reason why there was not a single Republican on the jury that tried me the last time I had a trial, although one-half of that jury came from the good county of Bourbon. There must be some reason why there was not a single Republican on either one of the juries that tried Jim Howard; not a one on the jury that tried Berry Howard; not a one on the jury that tried Capt. Ripley; not a one on the jury that tried Youtsey.

It will not do to say that Democrats always happen to be selected to do jury service in these cases. It has happened thus in too many cases and too often. It will not do to say that the jury commissioners always "happen" to place the jury wheel the names of Democrats and never happen to place within the jury wheel the names of Republicans. It will not do to say that if the jury commissioners do "happen" to place within the jury wheel the names of a few Republicans and the names of a few Republicans "happen" to be drawn from the jury wheel, or the sheriff in his perambulations over the country "happens" to summon a few Republicans to do jury service that prosecution almost invariably "happens" to reject those particular Republicans from jury service. It will not do to say that out of 176 men summoned in this case, at this trial, from a county that gave McKinley over 400 majority in 1896, that 172 of these men thus summoned "happened" to be regular Democrats and but four happened to be Republicans, and none "happened" to be Independent Democrats. It won't do to say that Mr. Franklin "happened" to exhaust one of his peremptory challenges in this case, upon one Charles W. Penn, a Republican, when this jury box was first filled, and when there were eleven Democrats subject to peremptory challenge. Have you ever asked yourselves the question since this trial began: "What is it that peculiarly fits me for jury service that unfits my Republican neighbor?" "What are the qualifications that I possess that makes me a competent juror in the eyes of the prosecution that my Republican neighbor does not possess, and makes him incompetent?" These are serious questions, gentlemen,

What is it that a man must possess to make him a competent juror in this case or in these cases that is neither prescribed by the laws nor the statutes of our country? The Republicans possess all the statutory qualifications. In the eyes of the law they would be competent jurymen. Then what is it that a man must possess to make a competent juror in this case that is neither prescribed by the laws or statutes of our States? What can it be? Have you ever asked yourselves the question, Mr. Ingalls, what can it be? I will tell you. You must in the past have voted the straight Democratic ticket. And why must you in the past have voted the straight Democratic ticket before you are permitted by the prosecution to serve as a juror in this case? The reason is, that they expect you to vote the straight Democratic ticket in the rendition of your verdict. Be not deceived about it. In other words, to say least of it, they expect your political affiliations to help you render that verdict. Then in what attitude are they placing you men before the communities in which you reside and before the eyes of the world—relying upon your political affiliations for a verdict of guilty, whether the law and the facts authorize such a verdict or not? If I were you men, careful of my good standing in the country and jealous of my honor, I would resent certainly any such imputation upon my integrity, whether those imputations came from friend or foe.

I am a Republican, gentlemen. I have never had any apologies to make for my Republicanism. I have none to make now. You gentlemen are Democrats and you have a right to be Democrats. You have a right to affiliate with whatever political party you believe to be to the best interests of this country. The man who would deprive you of that right is an intellectual thief and robber at heart. But no man has the right—no set of men have the right, to expect of you a certain sort of verdict by reason of your political affiliations, when you have entered the jury box and have taken a solemn oath that you took to try me from the law and the testimony. Doubtless you gentlemen are saying in your heart that it does look like the prosecution has had a sinister motive in this. Doubtless you are saying in your hearts that, if the prosecution is relying on our political affiliations for a verdict of guilty, that they are relying upon a broken reed. There is not an honest man on this jury but what is saying that in his heart. Doubtless you are saying that your political affiliations shall have nothing to do with the rendition of your verdict one way or the other. There is not an honest man on this jury but what is saying that in his heart, not a one, my friends. Doubtless you are saying that you have no bias or prejudice in this case, one way or the other and all that may be true; and yet you may be mistaken about it. I am told that there are certain fever districts in some of the States of this Union, notably in Florida and Missouri, that so long as one remains at a

certain elevation above the sea level that he is immune from the dreaded fever; but that so soon as he descends below the safety line, and comes in contact with the germs of the disease and that he contracts it. If you were a stranger in that country and should drive down and drive out and some one should say to you: "You have contracted the fever," you would say: "You are very much mistaken. I never felt better and freer of disease in all my life;" and yet without your knowing it, you would have contracted the fever. And you, gentlemen, may have come to this case with that fever of prejudice with which you are not aware. Such a thing is possible.

I know that you men have heard of me. I know you have heard a great many things said about me that are untrue. I know that is a fact. The truth is, and I expect to speak the truth if I know it, the truth is, that the question of my guilt or innocence has long since become a political question in this State. You know that the Democratic papers, from the great dailies down to the little country organs, have continuously and vociferously proclaimed that I am guilty. The Republican press on the other hand says I am innocent. Political campaigns have been waged in this State upon that question. Politicians have been elected to office and others have been defeated for office in proclaiming the one or denying the other. It has become a political question throughout. On the one hand stands the great mass of Democratic voters throughout the State, who have been taught to believe that I am guilty. On the other hand, stands the great mass of Republican voters throughout the State, who believe I am not guilty. You know that. The communities from which you gentlemen came are divided on that question to-day and they are divided on it, in the main, as you know, along political lines. The affair generated out of political strife and excitement. The Democratic leader of the State was killed—shamefully murdered. The Republicans were charged with that murder, and it is almost impossible to take politics from this case. It is a difficult matter not to make up one's mind about a thing when it is in everybody's mouth; when it is discussed through the newspapers, from the pulpit, on the huskings, at the country cross roads, and at the country stores.

Some of you men said that you had formed opinions in this case. You, Mr. Lawson, you Mr. Wyatt, and you, Mr. Mitchell, said that you had formed opinions, and that you were afraid to risk yourselves and afraid to trust yourselves to give me a fair trial. Others of you said that you had formed opinions in this case. You, Mr. Wilson, said that you would go into the jury box with prejudice and that that prejudice would have to be removed by testimony. You, Mr. Ingalls, said that you had an opinion formed, and both of you Mr. Estes, said that. Others of you said you had not formed any opinion. You said that Mr. Ryan and you Mr. Booth, and you Mr. Hill, but you may have

come to this jury box, like the man out of the fever district of Florida, having that germ of prejudice and bias of which you are not aware; such a thing is possible. And in the name of all that is dear and sacred, I ask you to rid yourselves of all feelings of hostility, bias or prejudice that you may feel towards me by reason of my political affiliations, if you have any, or by reason of the prejudice you have against the section of the State from which I come, if you have any, and give me that same sort of a fair and impartial trial that you would give one of your neighbor's boys. Whatever may be my politics, whether good politics or bad politics, it does not alter the fact that I am a citizen of this Commonwealth and a human being, and entitled to a fair and just trial at your hands. Whether the section of the State from which I come be a good section or a bad section; it does not alter the fact that I am entitled to a fair and an unprejudiced hearing at your hands, and I believe that you are going to do what you can to give it to me. I believe that. But I ask you to bear in mind that we are all a frail, weak, short-sighted set of human beings in this world; and that our prejudices and likes and dislikes have a great deal to do in controlling our conduct throughout life. The prosecution know this, and, as I say, they have had you summoned here in the hope that your political affiliations would write for you a verdict of guilty. How insidiously has the poison of political prejudice and revenge been injected into this case! Everything has been done and said that could be done and said to make you gentlemen have contempt for me. You know that. The mountain people have been sneeringly referred to. Mr. Hendricks called them murderers, and maurauders, red-handed assassins and black-hearted villains. That conduct on the part of the prosecution is neither fair to you nor to me. It is not fair to you because it is an effort on the part of the prosecution to have you convict me by reason of your prejudice, and none of us is without. It is not fair to me, because it is an effort on their part to have you convict me outside of the law and independent of the testimony. I think the prosecution should deal fairly with you gentlemen, and with me, and I think we should deal fairly with each other, and so far as I am individually concerned I propose to deal fairly with you in the discussion of this case and I desire to say to you now that if I advance any argument that does not seem to you to be reasonable and right, I ask you to reject it. If I misquote or misstate any of the testimony, I beg of you not to consider it, because you ought not to. I think we should deal fairly with each other, men, and if I properly understand the mission of an advocate before a jury, or of a lawyer, or client in the argument of a case it is not, or should not be, to misquote or misrepresent the law or to dwarf or twist the evidence to suit one's own ideas in any individual case.

Argument before a jury should never be used for the purpose of

artfully covering up the salient points of either the law or the testimony to the end that the jury may be induced to bring in an unjust verdict, unjust either to the State or unjust to the accused. So far as I am individually concerned, I know that I am gifted with no such words, or worth, or power of speech to force you either beyond the law or the testimony in the case, if I had desires of that character, which I have not.

These gentlemen prosecuting me here have been given all the advantages that this glorious Blue Grass country and other favored sections of our land affords, while my home and life have been cast among people whose advantages have been poor, whose means have been limited, and whose opportunities to fit their sons and daughters to cope with their fellow men have been of the worst. Besides, men, as you see, I am a mere boy, unaccustomed to making speeches like these able and adroit lawyers. I have no power to write my innocence on your hearts and engrave it on your bones as justice in this case says that it ought to be done. If I had the same power of speech and the same force of logic as my friend, Mr. Franklin, I could convince you, almost before my argument began, that the harming of Mr. Goebel never entered my heart and that I am the worst abused and persecuted man ever accused of crime on the American soil. But these extraordinary gifts, men, I do not possess, and I shall, therefore, have to ask you to go over the law and the testimony in this case in but a common place way, and if I can be of any aid to you in arriving at a correct verdict, I will feel that I have discharged my duty fairly and faithfully to you and been of service to myself. I ask you to let us reason together.

If you have me convicted in your hearts already, if you feel that I am a guilty assassin and you regret that you were brought into this close contact with me, if during the progress of this trial your ears have been open and anxious and ready and willing to catch everything of a damaging nature brought out against me and turn a deaf ear to all that has been said on the side of the defense, then any effort on my part to convince you that I am an innocent man would be a waste of my needed vitality and a useless consumption of your time. But you gentlemen will not do that. You have taken a solemn and impressive oath: "I do solemnly swear that I will try this case according to the law and the testimony and a true verdict render, so help me God," and so far as within your power lies, I believe you will keep sacred that solemn oath. Whatever may be your religious tenets, whether believer or unbeliever, Catholic or Protestant, Jew or Gentile, whatever may be your political affiliation, whether it be that of a Democrat or that of a Republican, the oath you have taken has within it a mighty force, that ought to lift every man who takes it out of all political bias and prejudice; so far as your weak and

imperfect nature will allow us, it ought to lift us into a region of absolute duty and absolute truth. When your verdict is rendered, the testimony and the law in this case ought to authorize and justify you in that verdict. You have raised your hands between your heads and heaven and called witness to Almighty God that a true verdict you would render in this case. The eyes of a proud Commonwealth are upon you; aye, the eyes of a great nation are turned towards the scene of this trial. The prayers of a justice-loving people are with you in the rendition of such a verdict that innocence merits, right demands, your heart sanctions and your consciences approve. I have always believed that the right in this case would in the end prevail. Seasons in and seasons out, years in and years out, through dark fortunes and through bright, (if there have been any bright), I have continued pleading and appealing to my fellow countrymen, and I am now particularly pleading and appealing to you gentlemen to end this long and bitter controversy in a way that justice demands, right approves and your hearts sanction.

I am sure you will agree with me that when it is ended that it ought to be ended in such a way that no harm will befall an innocent man and that no guilty man shall go unpunished; and I am sure you will agree still further that when it is ended it ought to be ended in such a way as will be a credit to Kentucky for her sense of fairness and justice in dealing with those accused of the infraction of her laws. If you men should render a verdict of not guilty in this case and it should turn out within the next week or within the next year that I am guilty, then Kentucky would be held in just contempt for the lax administration of the law; if upon the other hand you should find a verdict of guilty in this case and it should turn out within the next one hundred years, as it will turn out, that I am not guilty, then a greater injury has been done the State than if she had put herself down upon the side of law and justice and mercy and humanity. So it becomes important, gentlemen, to the State of which we are citizens that a just verdict be rendered in this case. Such a verdict as will do no injury to the State, no harm to the accused, no violence to the oaths you have taken to render a just verdict in this case and such a verdict as will not in future years bring remorse of conscience to your souls.

There is but one thing before you in order to determine what that verdict shall be, and that is the question of my guilt or innocence. So far as the merits of this individual controversy are concerned, it does not matter whether one thousand mountaineers or ten thousand were brought to Frankfort by me before the killing of Mr. Goebel, because no man who came with that mountain crowd has been indicted for firing the fatal shot. So far as the merits of this individual controversy are concerned, it does not matter whether Taylor called out



the militia before or after the shooting of Senator Goebel. I was not a military officer, gentlemen. I had nothing to do with the militia. No connection has been shown between me and the militia. So all these things do not matter. The question is, the thing with which I am charged is, did I procure some one to shoot and murder Senator Goebel and was he killed in pursuance of that counsel and advice, if I did so counsel and advise?

That is the question in this case, men, and in the determination of that question there are certain well defined roads we must travel, two beacon lights by which our heads and hands and hearts are to be guided in our deliberations, and that is the law that has been given to you by this Honorable Court and the testimony you have heard from the mouths of the witnesses. That is it, men, those are the two things: the law and the testimony.

This is a peculiar case in some respects. Under ordinary circumstances and under ordinary conditions the juries of the country are left to decide what weight and what credence they are willing to give to the testimony of any witness or any number of witnesses, but that is not true in this case. Human wisdom and human experience has been such that when men are charged with conspiracy to murder their fellow men, those men cannot be relied upon to tell the truth when they are testifying against another alleged co-conspirator for their own liberty. The Court tells you in one of his instructions, I believe number eight, that one alleged conspirator cannot corroborate another alleged conspirator, that you cannot believe all the alleged conspirators unless their testimony is corroborated by other testimony material to the issue. If the county of Bourbon was filled to standing room with men all swearing until they were black in the face to any particular fact, if they were alleged co-conspirators, this Court tells you that you cannot believe them all unless their testimony is corroborated by other testimony material to the issues. If the blackest convict in the penitentiary at Frankfort should come here wearing the badges of infamy around his person, the law tells you and the Court tells you that his testimony would be entitled to more weight and more belief, and more credence than the testimony of a million Cultons, a million Goldens, a million Cecils, and a million Youtseys. Why? Because the law would not challenge the negro's testimony. It would not require the negro's testimony to be corroborated before it could be believed, but the law does challenge the testimony of Culton, Golden, Cecil and Youtsey & Company, and says that it must be corroborated before it can be believed.

And another thing in regard to these instructions. We have heard a great deal said by Colonel Hendricks about a reasonable doubt, believing things beyond a reasonable doubt, before you could convict the defendant in this case. If you were to rely

upon the words of Colonel Hendricks, the words "reasonable doubt" are a mere empty phrase. It does not mean anything, and does not signify anything. This honorable Court has a different conception of that phrase, "beyond a reasonable doubt." I will not take up your time to read these instructions—that was done by Judge Morton—but I desire to say to you that in every instruction upon which a verdict of guilty can be asked that you will be compelled to believe in the guilt of the accused beyond a reasonable doubt. This Court has gone farther than that. It fears that you may overlook that important language in these instructions, and he has embodied it in a separate, distinct and independent instructions, and said to you that you cannot find the defendant guilty unless you believe beyond a reasonable doubt, from the testimony, that he is guilty of that with which he is charged. What does that phrase "beyond a reasonable doubt" mean, gentlemen? It must mean something; else, the Court would not have used it. And I desire to say to you that there is a great distinction between the trial of civil and criminal cases in this particular. If this had been a civil case the Court would have told you that the verdict ought to go to whichever side has the greater weight of testimony to sustain it. Our law-makers in their wisdom have said this. Jurors in all civil cases have hung up before their eyes the scales of justice, as it were, and are required to render a decision for whichever side has the greater weight and value of testimony to sustain it. If it is for the plaintiff, find for the plaintiff. If it is for the defendant, find for the defendant. But that is not the law in the trial of criminal cases. Human liberty and human life are worth more than mere dollars and cents. It is so precious and so sacred in the eyes of the law, before you, in the capacity of jurors in this case, can lay violent hands upon my liberty, you must believe from the testimony, beyond all doubt, founded upon reason, that I am guilty of that with which I am charged. Greenleaf, the great writer on this branch of the law, has defined the phrase "beyond a reasonable doubt." He says it means this: "That in all cases of circumstantial testimony, the facts introduced upon the side of the prosecution must be such that there can be no escape from the conclusion that the defendant is guilty. In other words, the crime with which the defendant is charged could not have been committed at the hands of another or by the procurement of another." That is the law in this case. I will give Mr. Franklin the opportunity and the privilege to read to you from any law book known to civilized man, to confute, or contradict the position I have here taken. Applying that law to this case, there is not a possibility of you gentlemen rendering a verdict of guilty. For, is it not possible that Youtsey fired the fatal shot on his own volition? Is not that possible? Is it not possible that there could have been a conspiracy without me being a member of it? Is it not possible that Butler and

Miller and Jim Frank Taylor and E. U. Fordyce and Ed Mentz and Walter Day and George W. Long, told the truth, when they told you that my mission to Louisville on the 30th of January, was for a legitimate and honorable purpose? If any of these positions can be true, there is no possibility of there being found in this case, a verdict of guilty.

Now, gentlemen, having briefly stated the law governing this case, I desire to take up the testimony and see what it proves and what it disproves. Before there can be a contention between any set of individuals upon any sort of a proposition, there must be some common ground upon which to stand, something upon which the two contending parties agree. The prosecution upon the one hand and the defendant upon the other, in the case, agree, that Senator Goebel came to a shameful death and that those responsible for his taking off should be severely dealt with. We agree further, that assassination is the most cowardly and blackest of crimes known to the catalogue of offenses.

Every honest impulse of the human heart revolts and rebels against it. We agree further, I presume, that the killing of Goebel was the worst possible thing that could have befallen the Republican party in this State, and whether we agree on that last proposition or not, you gentlemen know that it is nevertheless true. Then the thing upon which we agree are, that Senator Goebel came to a shameful death; and that those responsible for his taking off should be punished; and that his killing was the worst thing that could have befallen the Republican party in this State.

We differ as to who is responsible for his death. The prosecution claims that Senator Goebel came to his death as the result of a huge Republican conspiracy of which they say, I was a member. And in support of their contention they introduce a large mass of testimony which may, for the convenience of discussion, be divided into some five main divisions:

They say, first, that the bringing of the mountain crowd to Frankfort, five days before Senator Goebel came to his death constituted a part of the conspiracy to murder him.

They say, second, that it was the plan of those implicated in the conspiracy to have the fatal shot fired from the office of the Secretary of State and that it was fired from there.

They say, third, that I absented myself from that office on the 30th of January, 1900, for two reasons; first, to give the assassin an opportunity to use that office, and for the further reason, as they allege, to try to take suspicion of the crime from myself.

They say, fourth, that the militia was to be used for the purpose of protecting those alleged to be implicated in the killing from arrest or from violence and that it was so used.

And they introduce, fifth, a large mass of threats and statements on the part of divers individuals, Culton, Golden, Youtsey and others, to try to bolster up their claim and theory of a conspiracy. I think I have stated with accuracy and with fairness the claims of the prosecution in this case.

The defendant, upon the other hand, denies these various allegations on the part of the prosecution and says first, that Senator Goebel did not come to his death as the result of a huge Republican conspiracy, or of any conspiracy, of which I was a member.

The defense says, second, that the bringing of the mountain crowd to Frankfort, five days before Senator Goebel came to his death, did not constitute a part of the conspiracy to kill Senator Goebel as alleged by the prosecution: but that they came to Frankfort upon a legitimate and peaceful mission; to petition the Legislature and remonstrate against those in power from overthrowing the will of the people as expressed at the polls.

The defense says, third, that if the fatal shot was fired from the office of the Secretary of State that it is the very best proof that I am not implicated in it; because nobody but a fool, would ever agree for a murderous shot to be fired from the windows of his office, or his home, if he were connected with it.

The defense says, fourth, that I did not absent myself from the office on the 30th of January, 1900, for the purpose of either letting my office be used for the purpose of assassination, or for the purpose of trying to cover up my alleged connection with it; but that my trip to Louisville on that day was for a peaceful and legitimate mission, of trying to bring to Frankfort, mostly from Western Kentucky, another crowd of petitioners to petition the Legislature.

The defense says, fifth, that the militia was not used, as alleged by the prosecution in this case, to protect the assassins from arrest, but that it was used for the purpose of protecting the occupants of the Executive building and the attachees of the various offices from mob violence. The defense further says, that if the prosecution be right in their claims that the militia was used for the purpose of protecting the assassins, that I should not be held chargeable with it, because I was not a military officer and I had nothing to do with the calling out of the militia. There has been absolutely no connection shown between me and the militia, one way or the other.

And the defense claims, sixth, as to these various threats and statements proven on the part of the prosecution, that they have been proven by men like Golden, Culton and Cecil and Youtsey, who are under indictment in this case and swearing for immunity, or they are sworn to by such men as Broughton and Huber, Smith and Company, who are swearing for money. Those are the claims of the prosecution and the defense in this case. Somebody

must be right; somebody must be wrong. The claims of both sides cannot be right because the two claims are antagonistic, one to the other, and the existence of the one set of claims negatives the existence of the other set.

(Court here took a few minutes for recreation).

When the Court kindly gave me a little rest, gentlemen, I was just saying that the claims on the part of the prosecution and those on the part of the defense could not possibly both be true. Now, I desire to take up the first claim on the part of the prosecution, namely, that Senator Goebel came to his death as the result of a huge Republican conspiracy of which they say I was a member. That claim on the part of the prosecution is like every other claim they make. It is either right or wrong. If they are correct that Senator Goebel came to his death as the result of a huge Republican conspiracy of which I was a member, I see no escape for you gentlemen but to bring in a verdict of guilty. If upon the other hand, they are mistaken in that claim you, gentlemen, cannot do anything else but bring in a verdict of not guilty.

Senator Goebel, from the evidence, came to his death in one or the other of three ways. First, he either came to his death as the result of a misadventure which I will not discuss; second, or he came to his death at the hands of some one acting on his own volition. Third, or he came to his death as the result of a conspiracy. If he came to his death at the hands of some one acting on his own volition, I could not be guilty. I was seventy-five miles away from the scene of the tragedy at the time of its commission and could not have fired the fatal shot. He either came to his death in the one or the other two ways that I have stated, and in either case I could not be guilty, or he came to his death as the result of a conspiracy, and if he came to his death as the result of a conspiracy, I was either a member of that conspiracy or I was not a member of it. If he came to his death as the result of a conspiracy of which I was not a member, no one will contend that I am guilty.

#### WAS THERE A CONSPIRACY.

Let us address ourselves to the first claim of the prosecution. In order to make any particular individuals responsible for the death of Senator Goebel, they must have met somewhere and formed some sort of a plan to bring about the death of Senator Goebel; and he must have been killed in pursuance of that particular plan. Otherwise, no guilt attaches so far as the death is concerned. Two things are necessary. There must have been a conspiracy to kill Senator Goebel by, at least, two individuals and he must have met his death in pursuance of that particular conspiracy formed by them. Then, if the prosecution knew who killed Senator Goebel at the time this indict-

ment was returned against me, it was the duty, under the law, of the Commonwealth's Attorney, Mr. Franklin, to name those men in the indictment.

There either was, or there was not, a conspiracy. If there was, it must have been formed some place and some one must have been in it. It could not have sprung into existence without human aid. Stones and trees do not enter into conspiracies to murder human beings. The Court says, in his instructions: "A criminal conspiracy is a corrupt combination of two or more persons by concerted action to do an unlawful act or to do a lawful act by unlawful means." Then before there can be a conspiracy there must be a corrupt combination of two or more persons. In order for there to have been a conspiracy to have brought about the death of Senator Goebel, two or more persons must have met some place and entered into an agreement looking to that end. For in order for there to have been an agreement there must have been some talk on the subject and the men must have met together. Then we arrive at the conclusion that the men who conspired to take the life of Senator Goebel, if there was a conspiracy, must have met at a place for that purpose or had some communication. That is a plain proposition, gentlemen. The prosecution cannot dispute it. Let us see who the prosecution says were the ones who entered into the alleged conspiracy.

Let us see. A while after Senator Goebel was killed, on the 30th of January, 1900, it was either claimed by the prosecution, or its friends, that this alleged conspiracy that resulted in the death of Senator Goebel had within its scope most of the leaders of the Republican party of the State. You know, gentlemen, that charges of that character were made. The prosecution has formally charged some twenty men with being in the conspiracy to bring about the death of Senator Goebel. Now, let us take up and see who the prosecution has been mistaken about in their claims and in their charges.

To begin with, old man Harlan Whittaker was arrested a few minutes after Senator Goebel was killed charged with having fired the shot. He was carried to the Franklin County Jail, surrounded by a mob that begged for the poor man's life, and wanted to take it without trial by either judge or jury.

Following Harlan Whittaker's arrest, the next man who was charged with having taken part in the murder of Senator Goebel was Silas Jones, a witness here for the prosecution. You remember that Jones was arrested on the 9th day of February in the city of Frankfort, by Detective Armstrong and others; carried down to the police headquarters and there told that he either killed Senator Goebel himself, or knew who did it, and if he did not tell that they would call the mob. Silas Jones did not know and could not tell, and he was lodged in the jail at Frankfort.

Following his arrest came the arrest of a Mr. Sutton, Sheriff of Whitley County. The papers teemed with damning testimony against him. They said it was certain that he was implicated and he was carried from one jail to another of this State in shackles and chains, branded as a felon.

Following his arrest came the arrest of Mr. Hazelipp, who was an officer at the Asylum at Lakeland. He was carried in chains up to Frankfort. Following that, on the 9th of March, warrants of arrest were issued for my brother, Charles Finley, William Culton, Captain John Davis and myself, charging us with the crime of bringing about the death of Senator Goebel.

Following that came the arrest of Henry E. Youtsey, on the 27th of March, 1900. These were the only arrests that were made before people were formally accused by indictment.

At the April term of the Franklin court, 1900, indictments were returned against five men who the prosecution claimed were the principals in this murder, namely, Harlan Whittaker, Jim Howard, Berry Howard, Tallow Dick Combs, and Henry E. Youtsey. They said in the indictment, which has been read to you, that there was a number of other people connected with the five named, as principals, that were unknown to the grand jury and unknown to the prosecution. At the same time indictments were returned against several people, charging them with being accessories before the fact to the murder of William Goebel. They indicted at that time Taylor, Finley, myself, my brother, Captain John Davis, Greene Golden, Wharton Golden and Bill Culton, charging us with being accessories before the fact. Following these indictments, the next man charged by the prosecution as being implicated in the murder of William Golden, was His Honor, Robert Noaks, Esq. Robert Noaks was arrested over in Virginia a few days before I had my first trial in this Court House in July and August, 1900. He was brought down to Frankfort, stayed in Jail a day or two, was brought over here and testified in my case, and after doing that, he was never indicted. Following that the next man charged with the murder of Mr. Goebel was Capt. Garnett D. Ripley. He was indicted at the January term of the Frankfort Circuit Court, 1901, a year after Senator Goebel had been killed. It took the prosecution a whole year to make up its mind and come to the conclusion that Captain Garnett D. Ripley was guilty of the murder of Senator Goebel. They arrested him down in Henry County, carried him up to Frankfort, and lodged him behind prison bars.

The next men charged by the prosecution with being implicated in the murder of Senator Goebel were Cecil, the witness, and Zack Steele. These men were not indicted until the January term of the Franklin Circuit Court, 1902, two years after Senator Goebel had been killed. I believe these are all the men that have been formally

charged by the prosecution with being implicated in the murder of Senator Goebel.

Now, let us see who it is that the prosecution has confessed by its own conduct to be not guilty of that with which they were charged.

Silas Jones was arrested, but never indicted. Noaks was arrested but never indicted. Sutton was arrested, but never indicted. Hazellipp was arrested, but never indicted. That makes four men who the prosecution has certainly confessed by their conduct to be not guilty, else they would have indicted them and tried them. Four men from this twenty leaves sixteen men who the prosecution at one time or another was so thoroughly convinced were guilty men, that they actually had them indicted by that convenient body, the grand jury of Franklin county. Of the sixteen men, whom the prosecution has formally indicted, let us see who they have confessed by their own conduct to be not guilty of the murder of Senator Goebel.

They have confessed by their conduct that Capt. Davis is not guilty of the murder of Senator Goebel, although he was indicted at the same term of Court at which I was indicted, and although he was on the train with me when we were trying to get to the mountains of Kentucky. He was dressed in a military garb and he had a pardon in his pocket from W. S. Taylor for alleged complicity in the murder of Senator Goebel. These things, say the prosecution against me, are overwhelming and damning testimony of my guilt. They are not so in the case of Capt. Davis. He is not guilty. The prosecution has confessed that by its conduct, because in August, 1900, Capt. Davis was given bond and sent to his home and told by the prosecution if they ever needed him that they would send for him. They do not now claim that Capt. Davis had anything to do with the murder of Senator Goebel. You have not heard anything of that character in this case. So when they charged in this indictment that Capt. John Davis and myself conspired together in bringing about the death of Mr. Goebel, that charge in your indictment, Mr. Franklin, is wrong, according to your own confession.

Let us see who else. They charged Greene Golden with being implicated with me in the murder of Senator Goebel, they said that Grene Golden and myself entered into a conspiracy to bring about the death of Senator Goebel. Greene Golden was not arrested for a long time. He was finally arrested and brought to Frankfort and lodged in jail and after many months of weary waiting, was finally discharged on bond and sent home. The prosecution has never tried him. They have never gotten ready to try him. They never expect to try him. And when they charge in this indictment that I conspired with Greene Golden to bring about the death of Mr. Goebel, that charge, they now confess by their conduct, is wrong.

Let us see who else. They charge in this indictment that I con-



spired with Wharton Golden and W. H. Culton to bring about the death of Senator Goebel. Golden and Culton are two of the leading star witnesses for the prosecution. Golden says he heard a great deal of rash talk. He says that he heard me use a great many expressions of violence, but so far as he is individually concerned, he did not know anything about Senator Goebel going to be killed on the 30th of January. He said the only way he expected Senator Goebel to be killed was in a fight in the Legislative hall. So, if Golden's word can be relied upon, Golden certainly did not know anything about the alleged plan of killing Senator Goebel, and, therefore, the conclusion is that I could not have been in any conspiracy with Golden, if I were in one at all. And there is another fact which leads me to believe that the prosecution does not believe that Golden was in a conspiracy to murder Senator Goebel. You remember he told you that he was over here in Cincinnati selling hardware in the store of Mr. Arthur Goebel. I do not for a minute believe that if Arthur Goebel believed that Golden was guilty of complicity in the murder of his brother that Mr. Goebel would have the remotest connection with Wharton Golden, one way or the other. I am confident he would not do it. And there is another thing about Culton which leads me to believe that the prosecution does not believe him to be guilty. I am not passing on the guilt or innocence of Culton. I have nothing to do with that. Culton says he is not guilty. He is a witness for the prosecution and he says he heard a great many threats and statements and heard a great deal of wild talk, and that he was the chosen man to go up in the House of Representatives and raise a fight and kill off enough Democrats to make a Republican majority and all that, but he further tells you that he was the worst surprised man in the whole city of Frankfort when he heard of Senator Goebel being shot. He further tells you that he never did advise with me in his life concerning the death of Senator Goebel, that he never heard me use an expression about it one way or the other. He says he heard me use wild talk, but not about killing Senator Goebel. That is the testimony in this case and it will not be denied. And if the people for the prosecution believe that Culton was a member of the conspiracy to kill Senator Goebel, I cannot think that they would have him over at the Wellington Hotel, the best hotel in this town, and be thrown in daily companionship with him. It is your duty, Mr. Franklin, to prosecute the guilty and not to associate with them in ideal fellowship and make out of them boon companions.

Culton says he is not swearing for immunity. Culton says he is not getting anything for his testimony. If Culton is not swearing for immunity, and is not getting anything for his testimony, the prosecution surely feels that he is not guilty, because if he is not swearing for immunity nor to get money, if he is guilty, the prosecution would

certainly have brought him to trial. But you can put Golden and Culton down in whatever category you want to; they both say that they were not in any conspiracy with me to bring about the death of Mr. Goebel. Golden said he didn't know anything about Goebel going to be killed from the office of the Secretary of State, and that he had no knowledge of such a plan, and Culton tells you that he was the most surprised man in Frankfort when he heard it, and he was never in any plot or plan to bring about the death of Mr. Goebel. Then, if the testimony of Golden and Culton can be relied upon, certainly I was not in any conspiracy with them to bring about the death of Mr. Goebel; because they say so, and they are star witnesses for the prosecution, therefore, when you charge in your indictment, Mr Franklin, that I conspired with Golden and Culton to bring about the death of Mr. Goebel, that much more of your indictment must be wrong.

Let us see who else. They charge in this indictment that I was in a conspiracy with Frank Cecil to bring about the death of Senator Goebel. They put Cecil upon the witness stand and Cecil says that so far as he is individually concerned, he had not the slightest idea that Senator Goebel was going to be killed, except the expression he says that he heard me make the night before Goebel was killed. He says, so far as he was concerned, he was in no plot or plan to kill Senator Goebel. He said he did not know anything about Mr. Goebel's going to be killed from the office of the Secretary of State. He said when I told him on the night of the 29th of January that there was a man coming down to kill Goebel the next day, that he never asked me who it was or anything about it. But I will get to that conversation later on. He said he never asked me anything about it; never inquired about it; didn't care anything about it. He says when I told him there was a man across the hall who wanted to kill Mr. Goebel a few days ago, and that I would not let him do it, that he did not inquire what the name of the man was; that he did not know anything about it and cared less. Then if Cecil can be relied upon, so far as Cecil is concerned, he and myself did not have anything to do with the murder of Mr. Goebel. Cecil said that he was an innocent man. Then when you charge me in this indictment with being in a conspiracy to bring about the death of Mr. Goebel, with Frank Cecil, if Cecil can be believed, that much more of your indictment is wrong.

Now, let us see who else. They charge in this indictment that I was in a conspiracy with poor old Harlan Whittaker to bring about the death of Senator Goebel. That is the charge in this indictment. Whittaker was turned loose on bond away back in August, 1900, and has been with his wife and children ever since, and the prosecution now says old man Whittaker had nothing to do with the killing of Mr. Goebel. Terms of court after terms of court have passed in this court-house, and the case of Harlan Whittaker has never been called

for trial. The prosecution has never gotten ready to try old man Whittaker. Whittaker has never prepared for trial. They have given him bond and told him to go home, and, if their present theory is to be relied upon, old man Whittaker had nothing to do with the killing of Mr. Goebel. Therefore, the conclusion is inevitable that I could not have conspired with him to bring about the death of Mr. Goebel.

Let us see who else. Capt. Garnett D. Ripley has been indicted as being an accessory before the fact to the murder of Senator Goebel. They charge that he and I were implicated in the murder of Senator Goebel. As I said a few minutes ago, it took the prosecution a whole year to find out that Capt. Garnett D. Ripley was guilty. They did not indict him until the January term of the Franklin Circuit Court, 1901. That was nearly a whole year after Senator Goebel had been killed, and nearly a whole year since they had charged me with being implicated in the murder of Senator Goebel. In other words, the prosecution had a whole year to investigate the guilt of Capt. Garnett D. Ripley and after a thorough investigation they came to the conclusion that he was guilty and they arrested him down in Henry county and carried him up to the Franklin county jail, followed by his broken hearted wife and terrified little daughter, and lodged him behind the bars. His trial came up in April of the same year and the jury in that case said, "We, the jury agree and find the defendant not guilty," and they sent him home. Therefore, when they charged in this indictment, that I was in a conspiracy with Capt. Garnett D. Ripley to bring about the death of Senator Goebel, that much more of their indictment must be wrong.

Let us see who else. There was Berry Howard, whom they charged in this indictment, that I conspired with to bring about the death of Senator Goebel. Berry Howard was not arrested for quite a long time. He was finally arrested and lodged in jail in Frankfort. He was put on trial for his life, and Mr. Franklin, before the jury, begged for his life. The jury acquitted Berry Howard and sent him home. Therefore, I could not have been in any conspiracy to kill Senator Goebel with Berry Howard, because the jury in that case said that he was innocent of the charge against him, and, therefore, when you charge us with joint complicity in the murder of Mr. Goebel, that much more of your indictment, Mr. Franklin, must be wrong.

Let us see who else. Here is Dick Combs. They charged in this indictment that Dick Combs and myself were in a conspiracy to bring about the death of Senator Goebel. Dick Combs was finally lodged in jail at Frankfort. Away back in August, 1900, he was given bond and sent home by Mr. Franklin, and if their present theory can now be relied upon, Dick Combs had nothing to do with the murder of Senator Goebel. Youtsey told Mr. Arthur Goebel that it was Dick Combs that he was dealing with in trying to kill his brother. Upon

that word of Youtsey, believing what he said. Mr. Goebel certainly wanted to prosecute the guilty and Dick Combs was arrested, but Youtsey says: "I was mistaken about that. Hockersmith was the man. I am responsible for Dick Combs' indictment and arrest. I told them it was Dick Combs but it turned out to be Hockersmith." So, when they charged in the indictment here that Dick Combs and myself were in a conspiracy to bring about the death of Senator Goebel, that much more of their indictment is wrong.

Now, let us see who the prosecution, has confessed by its conduct, that I was in no conspiracy with. I was in no conspiracy with Silas Jones, none with Sutton, none with Noaks, none with Heazlipp; because they were never indicted. I was in none with Capt. Davis, none with Berry Howard, none with Greene Golden, none with Wharton Golden and Bill Culton, if they can be believed, none with Capt. Garnett D Ripley, none with Dick Combs. Then let us see who I was in a conspiracy with, if I was in a conspiracy with anybody. Taking these men from the list, whom else do we have? They say that Taylor conspired with Jim Howard and Henry Youtsey, and these other men to bring about the death of Senator Goebel. I am here to say to you that I do not know anything about that. Taylor may have done it and he may not have done it. I am not here to answer for the sins of Governor Taylor, if he has any sins. He can do that for himself. I don't know whom he conspired with, whether anybody, but, so far as I am individually concerned, I expect to show you that I did not conspire with anybody. They charge in this indictment here that I procured five men to shoot and murder Senator Goebel, and they said at that time that there were unknown men acting with these men, but that bugaboo of an unknown quantity has been cast into the mist. That bugaboo of an unknown man whom the country was taught to believe must have been some mountain man, who came down with that mountain crowd, has been cast away; because, if the prosecution can be relied upon, no man who came in that mountain crowd had naught to do with the firing of the fatal shots that resulted in the death of Senator Goebel. None were present, aiding, or sheltering these who did fire it. But five men have been indicted as principals: Harlan Whittaker, who lives down in Butler county, Tallow Dick Combs, who had nothing to do with the mountain crowd and did not come with it. Henry E. Youtsey, who lived up here in the Northern part of this State in the county of Campbell, and who says he had nothing to do with the mountain crowd, and James Howard, who did not come with the mountain crowd, and had nothing to do with it, if the position of the prosecution can be relied up; because they say that he came to Frankfort on the very day that Senator Goebel was killed, within less than an hour of the murder. The mountain crowd came five days before. But for a long time this country was

taught to believe that the mountain crowd killed Senator Goebel, and that I brought the mountain crowd to Frankfort, and that, therefore, I am responsible for what the mountain crowd did; because they said that the unknown men in the indictment, certainly embraced some of the mountain crowd. But that ghost of an unknown man, if the prosecution can be relied upon, has been taken out of the case; for, they now say there was no unknown man about it. They say now that the unknown man had nothing to do with it; that he was, and is, a mere Will o' the Wisp, without either a local habitation or a name. If they can be relied upon it was Jim Howard and Henry Youtsey, who fired the fatal shot that resulted in the death of Senator Goebel, and nobody else was about, or had anything to do with it, because Youtsey says he said to Howard: "Do you want to see the Governor," and Howard said to Youtsey: "I don't want to see anybody," and Youtsey says there was nobody in the hallway, and Youtsey said to Howard: "If you see anybody coming, step under the stairway." Then nobody was in, or about, the office of the Secretary of State, or the hallway, and nobody had anything to do with the killing of Mr. Goebel except Jim Howard and Youtsey, if the position of the prosecution can now be relied upon, and, therefore, all this bugaboo about the mountain crowd, or any of them killing Senator Goebel, vanishes into vapor; therefore, none of this conduct on the part of the mountain crowd, none of this wild speech on the part of the mountain crowd, resulted in the death of Senator Goebel; because no man who came with that mountain crowd has ever been accused by the prosecution of firing the fatal shot, or being present, aiding and abetting those who did fire it. Another distinct and independent set of men have been indicted as hertofore referred to, and all of this abuse of the mountaineers about them wearing cottonade pants and buckeye hats, and all this alleged shooting and all this alleged threatening speech on their part, have been dragged into this case for a purpose, and that purpose is, to prejudice you against me; because I did bring the mountain crowd to Frankfort, and I will take up later and explain to you gentlemen my motives for bringing that mountain crowd. But if the prosecution can now be relied upon, no member of that mountain crowd fired the fatal shot, or was present aiding or abetting those who did fire the fatal shot that resulted in the death of Senator Goebel, therefore, if they constituted a part of the alleged conspiracy to murder Mr. Goebel as is maintained by the prosecution, that conspiracy resulted in nothing, because a different set of men, living in other portions of the State have been indicted, charged with firing the fatal shot.

But I am wandering just a bit. I say they have charged me with procuring Harlan Whittaker, Dick Combs, Henry E. Youtsey, Berry Howard and Jim Howard to fire the fatal shot that resulted in the death of Senator Goebel, none of whom came with the mountain

crowd. That is what they charge me with. If I did procure those men to shoot Senator Goebel, I am guilty. If I did not procure those men to kill Senator Goebel, then I am not guilty, **although** the mountain crowd came to Frankfort, and **although** the militia was called out, and **although** there was a great deal of excited speech and a great deal of reckless talk done at Frankfort, during those stormy times. I say if I procured Jim Howard, Henry Youtsey, Dick Combs, Harlan Whittaker or Berry Howard to shoot or kill Senator Goebel, then I am guilty, whether the mountain crowd came to Frankfort or not; but if I did not procure Jim Howard, Henry Youtsey, Dick Combs or Harlan Whittaker or Berry Howard to shoot or kill Senator Goebel, then I could not be guilty, **although** the mountain crowd did come to Frankfort, and **although** the militia was called out. I think that is clear.

Now, let us see: Did I procure Dick Combs to shoot and murder Mr. Goebel? What is the testimony in this case? Dr. Prewitt told you that Dick Combs was in the Adjutant General's office when the fatal shot was fired. The testimony in this case is, that I never laid eyes on Dick Combs until after Dick Combs was arrested and lodged in the Franklin county jail charged with this crime, the same as myself. The testimony is that I never saw Dick Combs, had no communication with him, had nothing to do with him, and did not know him until after he was lodged in jail, after I had been lodged in jail. Therefore, the conclusion is inevitable that I did not conspire with, aid, counsel, advise or procure Dick Combs to shoot and murder Senator Goebel. There can be no doubt about that, and when they charge in this indictment that I procured Dick Combs to shoot and murder Senator Goebel, you know, and the whole country knows, that that much more of their indictment is wrong; because I did not procure Dick Combs to shoot and murder Senator Goebel, if the testimony for the prosecution in this case can be relied upon.

Now, let us see who else: They charge in this indictment that I procured old man Harlan Whittaker to shoot and murder Senator Goebel. That is charged in this indictment, but the testimony is, that I never laid eyes on old man Harlan Whitaker until after he was arrested and I was arrested, and until we were carried to the Louisville jail for safekeeping after Senator Goebel had been shot. That is the testimony in this case. There is nothing in the whole record to contradict it. So if the testimony can be relied upon, I certainly did not procure Harlan Whittaker to shoot and murder Senator Goebel. And besides that the prosecution now says that Harlan Whitaker had nothing to do with the killing of Goebel.

Then they charge me in this indictment with procuring old man Berry Howard to murder Senator Goebel. That is what they charge me with and that is what you gentlemen are trying me for. That is

the thing upon which you are asked to take from me my life by these able gentlemen in their excited arguments. What is the testimony in this case? The testimony in this case is; that I had scarcely met Berry Howard before Senator Goebel was killed; that I had had no communication with him; that I had had no conference with him; that I did not procure him to do anything, and besides that, Berry Howard has been acquitted of the charge of having fired the shot, or of being present, aiding, or abetting those who did fire the fatal shot that resulted in the death of Senator Goebel. Then three out of the five named persons I could not be guilty with. I was not guilty with Tallow Dick Combs. I did not know Tallow Dick Combs, and Tallow Dick Combs has been turned loose and has had his liberty for nearly three years. I could not be guilty with old man Harlan Whittaker, I did not know him, and he has been given his liberty for nearly three years. I could not have been guilty with Berry Howard, because Berry Howard has been acquitted by a jury of his country. Then if I am guilty at all, I must be guilty in procuring either Jim Howard or Henry E. Youtsey to shoot and murder Senator Goebel. I couldn't be guilty with these other men. I could not be guilty with Berry Howard, I could not be guilty with Tallow Dick Combs, I could not be guilty with Harlan Whittaker. Then I repeat, if I am guilty at all, I must be guilty of procuring either Jim Howard or Henry E. Youtsey to fire the fatal shot that resulted in the death of Senator Goebel. There can be no escape from that.

Now, did I procure Jim Howard to fire the fatal shot that resulted in the death of Senator Goebel? These men in their arguments here stated that Jim Howard was the man behind the gun; that Jim Howard was the man who pulled the trigger and fired the fatal shot. Did I procure Jim Howard to fire that fatal shot that resulted in the death of Senator Goebel? If I did, I am guilty. I did not, then so far as Jim Howard is concerned, I am not guilty.

What is the testimony in this case? Think over it. We have gone through this trial for some four weeks. Think over the testimony that has been introduced on the witness stand in this case and point to a single witness on the part of the prosecution or the defense that said I ever even knew Jim Howard at the time Senator Goebel was shot on the 30th of January, or prior thereto. If you will show me a witness in the whole case who has sworn from this witness stand that I even knew Jim Howard, I will agree right now that you gentlemen shall bring in a verdict of guilty. Show it, and bring in your verdict. There is not a man in all the record of this case, from the first witness to the last, who has testified that I even knew Jim Howard on the 30th of January, 1900. Point it out, Mr. Franklin, and then ask a verdict of guilty at the hands of the jury; point it out, and I will agree that you find me guilty. If the

testimony in this case can be relied upon, I did not know Jim Howard at the time Senator Goebel was killed. If the testimony in this case can be believed, I never had any communication with Jim Howard before Senator Goebel was killed. Howard tells you from the witness stand in this case that he did not know me at the time Senator Goebel was killed, and never met me until after we had both been transferred to Louisville after our first trials for safekeeping. I testified to that fact myself, and since Col. Campbell has said that I am one of the ablest of the star witnesses on the part of prosecution, certainly I have a right to refer to my own testimony. Mr. Howard says he never saw me until he met me at Louisville after he had been convicted and after I had had a trial. I testified to the same thing, and there is no conflicting proof. There is not a syllable of proof on the part of the prosecution to show anything to the contrary. Then, so far as Jim Howard is concerned, I certainly did not conspire with Jim Howard to bring about the death of Senator Goebel, if the testimony in this case can be believed or relied upon. Is not that true? The only testimony in the whole of this record which would tend to show, even by indirection, that I had anything to do with Jim Howard, is the testimony of Frank Cecil, and he says he had a talk with me on the 29th of January in my office; that he casually dropped in my office on that night and that I said to him that a man was coming to Frankfort tomorrow to kill Senator Goebel. Frank Cecil was asked if he knew that Jim Howard was going to be in Frankfort, and he said he did not. So taking Cecil's statement for it, I did not know Howard was going to be in Frankfort. I did not know anything about Jim Howard going to fire the fatal shot that killed Senator Goebel. Even Youtsey says that so far as he knew, I did not know Jim Howard, and I had had no connection with Jim Howard. Youtsey's testimony is that I agreed to be out of my office. He don't say that I agreed to be out of my office for the purpose of Jim Howard killing Goebel; not a bit of it. He don't say that I had any knowledge that Taylor had written to Jim Howard, and that Jim Howard was going to be in Frankfort. Not a bit of it. Youtsey never said anything about that. Then if the testimony of the prosecution can be believed, if the testimony in this case is going to have any credence, I did not know Jim Howard; I had no communication with Jim Howard until after Senator Goebel had been killed. Then, gentlemen, I could not be guilty, so far as the proof in this case is concerned, of conspiring with Jim Howard to bring about the death of Senator Goebel, because the testimony is, that I did not know him; the testimony is, that I had no communication with him, and had nothing to do with him. Cecil said that he did not know that Jim Howard was going to be in Frankfort on the day that Senator Goebel was going to be killed.



You cannot go outside of the record and say "there is no testimony showing Powers knew Jim Howard; there is no testimony showing he had any communication with Jim Howard, but we believe that he did." Oh, no, men, you cannot do that. You have sworn that you would not do that. You have sworn that you would try this case according to the law and the testimony. You have sworn that you would not supply any of the testimony either for the Commonwealth or for the defense. Then you cannot say 'it is more than likely true that you did know Jim Howard and we are going to believe it anyway.' You cannot do that, and you are not going to do that. If you are going to do that, this trial is a farce; if you are going to do that, there was no necessity for introducing any testimony in this case. If you are going to supply the testimony for the prosecution, let us do away with the formalities of a trial and let you settle it all. Read the indictment and find me guilty. You have sworn that you would try this case from the law and from the testimony.

All that Cecil's testimony could mean, if it be true, is that I had knowledge that Senator Goebel was going to be killed. I say, if true. So if every sentence and syllable he uttered is absolutely true it could not mean any more than that I had knowledge that Mr. Goebel was to be killed, and that not is enough. The court has not told you in these instructions that if I had knowledge that Mr. Goebel was to be killed that you should find me guilty. No! That has never been the law in this country. Mere knowledge that a man is going to be killed does not connect the man who has the knowledge. The court has not said, if I had knowledge of the matter, you should find me guilty; but on the contrary he says if I advised, counseled or procured some one to shoot Senator Goebel, in that event I am guilty. Suppose you should be down here on the streets of Georgetown and a man should pass you hastily and say to you, 'I propose to shoot to death that man down on the street corner,' and he goes and shoots him to death; you were down there and you heard what he said and you knew he was going to do it, you had knowledge of it; but would anybody contend that you were guilty simply because you had knowledge that the man was going to be shot down in the streets of Georgetown? No. That would make all eye-witnesses to the crime participants in it. Isn't that true? That has never been the law in this country—it never will be. And taking everything that Cecil has said as true it does not show any connection between Jim Howard and myself. But let me repeat again that Cecil's story is a base fabrication, sworn to for so much immunity.

Then, if the testimony can be relied upon, I was in no conspiracy with Jim Howard to bring about the death of Senator Goebel. If every word that Cecil testified to be true, and it is not true, and may the God in heaven strike me dead this minute if I said to him: "There

is a man coming to-morrow to kill Goebel,' or that I tried to get him to kill Mr. Goebel; but supposing every word that Cecil testified to was true, it makes no connection between me and the assassination of Mr. Goebel, or me and James B. Howard. Cecil said he did not know Howard was coming to Frankfort, and that all I said to him about the matter was that there was a man coming to-morrow and if he comes he will certainly kill Goebel, and Cecil said that I had my murderous talk to him when I was alone; that his pious soul was very much terrified when, he says, I expressed to him a desire for blood; that his whole nature rebelled against it and revolted at it. He said that I must have realized that I had made a mistake in approaching him on such a subject; for he says, I said to him, to never mention what I had said to him; although he has me within the next five or ten minutes getting another man to approach him on the same subject and asking him what he (Cecil) 'thought about what Powers had said to him,' and offering him \$2,500 to kill Mr. Goebel. He says that this occurred in ten minutes after I had told him that there was a man coming to Frankfort tomorrow to kill Goebel. If there was a man coming to Frankfort on the following day to kill Goebel, why should I have Cecil offered \$2,500 for doing the work? Answer me that, gentlemen. And if Cecil and others would waylay and rob a man of \$2,100, don't you believe that he would kill a man for \$2,500, if it had been offered him? If he would detain a woman against her will for the purpose of having carnal knowledge with her, what crime would he not commit? As God is my judge I never said to Cecil what he says I did. May God in heaven paralyze my speech, if such be true. The law says that a man who is base enough to enter into a conspiracy to murder his fellow-man, is infamous enough to swear himself out if he can, by swearing others in. The law says that you cannot believe what he says unless his testimony is corroborated. Cecil's testimony is not corroborated, but it is contradicted. If I had wanted to have testified falsely, I would have denied Cecil's being at my office at all that night. I knew that it was beyond the power of the prosecution to have contradicted me in that except by Cecil's own testimony. But if all that Cecil testified to be true, which it is not, it does not even remotely connect Jim Howard and myself with the murder of Mr. Goebel.

Then four of the five men named as principals, that you, Mr. Franklin, charge me with procuring to shoot and murder Senator Goebel, if the testimony can be relied upon, I certainly did not procure. I did not know Disk Combs; I did not know Harlan Whittaker; I did not know Jim Howard; and Berry Howard has been acquitted. Then four of the five men that I am charged in this indictment with procuring to shoot and murder Senator Goebel, I did not know and had no connection with, if

the testimony of the prosecution can be relied upon and if it can be believed. I am not guilty with any unknown man, because they have eliminated the unknown man from this case. The unknown man has nothing to do with it. Then if I am guilty at all of procuring anybody to shoot and murder Mr. Goebel, I must be guilty of procuring Henry E. Youtsey to shoot and murder him. I am not guilty as to the other four named principals in this case. I am guilty with no unknown man because there is no unknown man, and if I am guilty at all, I must be guilty of procuring Henry E. Youtsey to shoot Senator Goebel. Is not that true, men?

Now, am I guilty with Henry E. Youtsey? As I said a moment ago, if I am guilty of procuring anybody to murder Senator Goebel it must be Henry E. Youtsey, and what does the testimony show as to that particular man? We must rely upon the testimony, and what is the testimony in this case? The testimony both upon the side of the prosecution and upon the side of the defense, is that I never met Henry E. Youtsey until the first day of January, 1900, just thirty days before Senator Goebel was shot and killed. If the testimony for the prosecution in this case can be relied upon, Youtsey never spoke to me or my brother relative to the shooting of Senator Goebel until the 29th day of January, one day before Senator Goebel came to his death. That is the testimony. You gentlemen no doubt have met with men with whom you have had an intimate acquaintance. You no doubt have met with men whom you could trust. You no doubt have met men you would not trust, but I want to ask you if you ever met a man in all your life and within thirty days afterward, without knowing anything further of him (and that is the testimony in this case so far as Youtsey and myself are concerned) without having any intimate relationship with him, I want to ask you if you ever took such a man into your bosom and revealed to him the secrets of your heart? Did you ever do it, Mr. Layson? I am sure you never did. Did you ever taken a man whom you just happened to meet aside within thirty days afterward and reveal to him your plans for money-making and the property you expected to acquire and the marital relationships that you desired to see your sons and daughters enter into? Did you ever do it? I can say for you that you never did. Did you ever become a candidate for any office elective by the voters of a county, district or State? And if you ever did, did you ever take a casual voter aside and reveal to him the exact plans you expected to adopt to win the race, and how you would defeat your opponents, A, B and C, but that they would not know anything about it until they were defeated? Did you ever commit any crime in your life? If you ever did, I want to ask you if you ever took some unknown man into your bosom and asked him to go with you to help you commit that crime?

(Court here adjourned until tomorrow morning at 9 o'clock.)

Georgetown, Ky., Aug. 29, 1903.

Court met pursuant to adjournment, and Mr. Powers continued his argument as follows:

Gentlemen: When the court adjourned last night we were discussing Youtsey, but I want to go back and say one word more with reference to Howard before I take up the Youtsey end of it.

You will remember that Col. Campbell on yesterday afternoon asked the defense why it was that they did not call to the witness stand and introduce Mr. Paynter and why they did not call and introduce J. B. Matthews. He said that those points of Cecil's testimony were corroborated by the fact that we had it in our power to produce these men, and that we failed to do it. Let us look at that a minute, gentlemen. Col Campbell has claimed that I am one of the chief star witnesses for the prosecution. If I am, I certainly have not tried to shield myself, but I have told the whole truth. There can be no other inference drawn. Again, Cecil is one of the men whose testimony this honorable court has told you could not be believed unless corroborated by other testimony. The court has not told you that you cannot believe my testimony unless it is corroborated by other testimony. So then it was incumbent upon the prosecution to introduce Mr. Paynter on this witness stand and corroborate the testimony of Cecil before it is worthy of belief, if the court has given the proper instructions to his jury. You remember yesterday afternoon that Col. Campbell said that Paynter was one of the conspirators in this case, and said in substance that if he ever got down in this neck of the woods, he would be called upon to stand trial for his alleged participation in this crime. How can you expect us to get witnesses here to testify in behalf of the defendant, when they are threatened with prosecution by the representatives of the Commonwealth, if they put in an appearance? These gentlemen well know that, so far as the defendant is concerned, he used his utmost power in trying to get Paynter to the witness stand in this case. They well know that interrogatories were prepared for Mr. Paynter to be sent to the State of Kansas, and that, after he was found to be in Kentucky, a subpoena was issued for Mr. Paynter to appear on the witness stand and testify for the defense. We failed to get him, but we are not responsible for it and not to blame, and even if we had got him here we could not have contradicted Cecil in the damaging part of his alleged conversation with me, if Cecil can be believed, because Cecil said that Paynter was not present at that time and that I never said anything about killing Goebel or doing other violence in Paynter's presence; that all he knew about Paynter was that Paynter was in my office on the night of the 29th, when Cecil says he came there.

And they say to us, "Why didn't you call J. B. Matthews?" Cecil says he had a talk with J. B. Matthews after he left your office and had the talk with you, they say why don't you call J. B. Matthews? They assert that he is my confidential man, my detective. If Mrs. J. B. Matthews can be believed he was also the detective for the prosecution in this case. If Mr. Franklin can be relied upon he was also a detective for the prosecution in this case, for don't you remember that Mr. Franklin put to R. N. Miller the question: "Did you not say to J. B. Matthews up at Indianapolis some time ago that you had a talk with R. N. Miller and that Miller said that J. L. Powers seemed to be intimate with Henry Youtsey?" You remember that question and you remember that Mr. Franklin was holding in his hand a large volume of written statements that must have been prepared by J. B. Matthews. Miller says he did not say it; but, judging from all appearances and the testimony in the case, J. B. Matthews must have been the confidential man and the detective for the prosecution. Again, as I say, why the necessity of the defense calling J. B. Matthews, so far as the Cecil end of it is concerned? The law says you cannot believe anything Cecil says, unless the testimony is corroborated by others. That is the law, and there is no doubt about that. Then if that be true, and it is true, why is it that the prosecution did not call Matthews to the witness stand and show by him, if true, that he did on the Monday night before Goebel was killed have a conversation with Cecil in the reception room between the private office of the Secretary of State and the Governor's office?

Now, let us continue the Youtsey end of it. I said to you last night that I was indicted and charged with procuring five men to shoot and murder Senator Goebel: Harlan Whittaker, Dick Combs, Henry E. Youtsey, Jim Howard, Berry Howard. I showed you last night that I did not know Harlan Whittaker. I showed you last night that I did not know Dick Combs, and that I did not know Jim Howard, and that Berry Howard had been acquitted. Then if I am guilty at all, I must have procured Henry E. Youtsey to shoot and kill Senator Goebel. I said to you further that the testimony in this case shows that I only knew Henry E. Youtsey about a month before Senator Goebel was killed. The testimony is that I was sworn in before him as a notary public, took the oath of office as Secretary of State; that he was the only notary public in the building, and that I had a casual speaking acquaintance with him after that time until the 27th day of January, 1900. You know they claim that I was implicated in getting Youtsey to fire the shot from my office, and you know I asked you last night that if you wanted to kill some of your neighbors, if you wanted to stoop to the dastardly method of assassination in order to get rid of them, "would you come down in some

of these stores and pick up a clerk with whom you have come in contact since you have been standing on this jury and take him inside and ask him to go into a conspiracy with you and ask him to shoot and murder your neighbor? You remember I asked you this question, would you take that clerk out to your home and put him down by your parlor window, or by the side of the window of your office, if you had an office in Georgetown, and instruct him to shoot the man as he passed by your door? Why, gentlemen, such conduct as that would be the act of an idiot, the deed of a lunatic. You would not do that; there is no question about that. Would I? If you wanted to have your neighbor assassinated, you certainly would not want it to be found out on you. Isn't that true? And if you had him shot from the windows of your office or home, would you not be publishing to the world the very thing that you most desired to keep secret? If you wanted your neighbor killed, your home would be the last place on earth that you would select as the place whence the fatal shot should be fired. You know that, and if you wanted your neighbor killed, the clerk in the store would be the last man on earth you would go to if you were hunting a man to commit murder. Is not that true? If you wanted your neighbor killed would not you go to some man you had seen trusted and tried, some man with whom you could risk your very life and say: "This man is interfering with my business interests." And wouldn't your home or your office be the last place on earth from which you would have the fatal shot fired? Is not that true, men? And if I had wanted Senator Goebel killed, or had had any interest in the killing of Mr. Goebel, do you think I would go to an unknown man like Henry E. Youtsey, a man of whom I knew absolutely nothing—nothing of his family, nothing of his trustworthiness, nothing of him—and agree with him that he could fire the fatal shot from my office with three other unknown men that I had not known up to that time, namely, Jim Howard, Harlan Whitaker and Dick Combs? If I had wanted Senator Goebel killed, would not I have gone to some man who had stood by me in the past, some man I knew I could rely upon, some man I had seen trusted and tried? And if I had wanted him killed would not my office have been the last place on earth from which I would agree that the fatal shot should be fired? Would not I have known that I was advertising to the world the very thing that I would have desired to keep a secret? Apply common sense to this matter. The best sort of sense a man ever had is common sense. If Youtsey can be believed, if his testimony can be relied upon, he never spoke to me about the killing of Senator Goebel until the 29th of January, 1900, one day before Senator Goebel came to his death. That is the testimony of Henry E. Youtsey. That is the testimony of the Commonwealth witnesses. I say if the testimony of the Commonwealth

can be relied upon, Henry Youtsey never spoke to myself or my brother concerning the death of Senator Goebel until one day before Senator Goebel was killed. If the testimony of Henry E. Youtsey can be relied upon, I did not know anything about his plans to kill Senator Goebel with Dr. Johnson, or with Hockersmith. I did not know anything about Youtsey wanting to get into my office, or that he had a slick scheme to kill Goebel from my office, because Culton tells you he never did tell me anything about that. The testimony is, that Youtsey never told me anything about his murderous plots prior to January 29th. I did not know that he was trying to get \$300.00 from Walter Day to kill Senator Goebel. There is no testimony in this record showing a thing of that character, and such a thing never did exist. Nothing, so far as proof in this case is concerned, reveals that I knew anything about Youtsey wanting to get Mastin's gun, and about Youtsey ordering cartridges from Cincinnati to kill Mr. Goebel with, and about his getting Hockersmith or Dr. Johnson in my office.

I know nothing about Youtsey and Johnson, and Youtsey and Hockersmith, at any time, searching the Executive building over to find a suitable place from which to fire the shot. I knew nothing about his and Johnson's plan for the man who did fire the fatal shot to run through the basement. I knew nothing about his dreaming that he saw some of the mountain men kill Goebel; nothing about his and Johnson's nitroglycerine scheme to kill Goebel in his room in the Capital Hotel; nothing about him saying to Capt. Ricketts that his (Youtsey's) job depended on Goebel's death; nothing about his making a proposition to the mountain men to kill Goebel; I knew nothing about his alleged talk with Taylor about Goebel's death.

Remember, gentlemen, that I knew none of these things, and that during these times I was in the mountains of Kentucky. I left Frankfort on the 12th of January and returned the 17th, left on the 26th and did not get back until the 25th. If the testimony for the Commonwealth can be relied upon, I did not know any of these things and I did not know anything about the proposed plan to kill Senator Goebel until the 29th of January, 1900, if their own testimony can be believed. Then there is no necessity to go back to times prior to the 29th of January in this discussion. Youtsey said I did not know, and that my brother did not know anything prior to that time. He says that on the morning of the 29th, the Monday before Mr. Goebel was killed, on Tuesday, that he went into my private office; that he found my brother sitting there at a desk, and he said to my brother—(he says he had never met my brother, never had any introduction to him. That is his testimony)—Youtsey said he went up to my brother and said to him: "See here, I want a key to your brother's office, with which to put some negroes in there to kill Senator Goebel." What do you think of this story? What do you think of Youtsey going to my brother, an un-

known man, and asking for a key to his brother's office for the purpose of committing murder from there? What do you think of it, men? He says my brother—I presume for the purpose of having some one see him give Youtsey the key to my office—got up and walked out into the hallway of the Executive building, a convenient place for Wharton Golden to see the deliverance of the key by my brother to Henry E. Youtsey. What do you think of it? That is what Golden said, and that is what Youtsey said. Now, let us see what else Golden says on that matter. Golden says he saw my brother give Youtsey a wrong key to that office, and Youtsey says it was the wrong key. I have never understood the force of that wrong key proposition until it was explained on yesterday. I had often wondered why it was that if my brother was in the conspiracy to kill Senator Goebel, and my brother was willing for it to be done, why, instead of giving Youtsey the wrong key to that office to get in there with, that he did not give him the right key. It has always been a mystery to me until the fertile brain of Col. Hendricks came on the scene on yesterday and made it as clear as muddy water. He said that the reason was that my brother, John, was waiting for Jim Howard to get down to Frankfort and that he did not want Youtsey to kill Goebel. Why did he not want Youtsey to kill him, if he and I are implicated with Youtsey as claimed? Why did he want to delay the matter, and have another man unknown to him to kill Goebel? Why should my brother be so choicy between unknown assassins? There is no testimony in this case of that character until that testimony was given in this case by the able attorney, Mr. Hendricks. I put the assertion on the part of Mr. Hendricks that my brother wanted either Youtsey or Howard to kill Goebel, on a par with another assertion he made on yesterday. He made the statement "that no woman knew any law, that no woman had the capacity to learn any law." I want to enter in behalf of the ladies of our land a special and general denial to that slanderous charge.

Golden says he saw my brother give Youtsey a wrong key to the office, and directly my brother came to him in the hallway of the Executive building and said: "We have two negroes here this morning to kill Goebel, Tallow Dick Combs and Hockersmith," and Golden says: "That must not be done." My brother said to Golden, if Golden can be relied upon: "You need not be alarmed, I gave him the wrong key." He asked my brother who that fellow was to whom he gave the key. My brother did not know. Golden hied himself away after saying that it must not be done and went over to Collier's office to get Gen. Collier to put a stop to it. My brother went with him and failing to find General Collier they came over to the Capital Hotel, and that I saw my brother and Golden in the hallway and said to Golden: "We cannot go to Louisville to-day." And we all went back to the Executive building. Golden says we did not talk about what had happened



between my brother and Youtsey on the way back, he did not know whether it had been decided to kill Goebel or not. He said he never talked to anybody about it that day and he never talked to anybody until long after Senator Goebel had been killed. In fact, he never talked to anybody about it until he was in the arms of his Saviour, Col. Thomas C. Campbell, going to Cincinnati to make a confession.

This, gentlemen, is the testimony of Wharton Golden and Youtsey about the alleged transaction of the key. Now, let us look into that a little. Let us see what bearing it has upon the case. Let us connect the statements of Golden and Youtsey with the facts in this case that are not disputed, and see whether or not the statements of Golden and Youtsey are in harmony with these facts. Golden and Youtsey are either testifying to the truth or they are testifying to a lie. My brother either gave Youtsey the key to my office or he did not give him the key. Golden tells you that no one was present when my brother gave Youtsey the second key to that office. And that I was not present when the first key was delivered. Youtsey says that there never was but one delivery and that was the wrong key, and that I was not present. Golden tells you that I was five or six steps in advance of my brother and Youtsey, and that I was going on toward my office, and that I did not see nor hear the alleged transaction about the second key. You see, gentlemen, he puts it out of my power to contradict him on that point; but Youtsey does contradict him. He says that he never got any second key. My brother is not here as a witness. The proof in this case, gentlemen, is that early on Monday morning I went to the Capital Hotel at Frankfort, for the purpose of making arrangements to send the mountain men back home; that I was over at the Capital Hotel there is no doubt; that fact is proven both by the testimony of the Commonwealth and by that of the defense. The difference in the contention of the prosecution and the defense, is as to why I was there. The prosecution tries to make it appear that I was over there trying to effect some part of the alleged conspiracy to kill Senator Goebel. Golden, you remember, testifies that early on the Monday morning that I said to him that I was trying to make arrangements to get off to Louisville; and that I had to go over to the Capital before I could make those arrangements; and that he showed me a letter from John H. Wilson, who was at Louisville, saying for him to come to Louisville. My testimony and Golden's differ on that point.

At any rate, Golden knew that I was over at the Capital Hotel on some business; and that, if I could get that business done, I intended to go to Louisville on that early morning train. And he says that a black mustached man came to him and my brother in the hallway of the Executive building and said something to my brother; that he did not know what he said, but my brother came to him in a few min-

utes and said that we have two negroes here to kill Goebel, and that when he asked John Powers who the black-headed, black-mustached man was; that my brother said that he did not know who he was. Golden says that he went around to the Agricultural office to see Gen. Collier to tell him about the murder going to be done, and to protest against it. Golden, who laughed and said, that when he heard that Goebel was killed, said that it was a damn good thing and he was glad of it—Golden, who was at all times willing, according to his own testimony, to go up into the Legislative halls and kill off enough Democrats to make a Republican majority—that fiend, who, according to his own testimony, was ready upon all occasions to kill, for some unexplained and some unexplainable reason, upon this particular occasion was as smooth as a May morning, as harmless as a dove, as timid as a tom-tit, as averse to the shedding of man's blood as a saint; his soul has terrified at the thought; his nature rebelled against it. That same Golden who, upon former occasions, and upon all occasions, was willing to walk over the blood of his dying victims; that same Golden who, on all after occasions, was willing to kill one or a dozen of those who opposed his supposed interests, as the necessities of the case might demand that same Golden who, when he heard that Goebel had been assassinated, said that it was a damn good thing, was, upon this particular occasion, thrown into a moral tumult over the thought of harm befalling any one.

#### GOLDEN'S QUEER CONDUCT.

Golden went to Gen. Collier's office, he says, to see him about it, and my brother went with him also to see about it; for, what else could be his purpose? If Golden did tell the truth about what the black-headed, black-mustached man said to my brother, and if my brother did say that there were two negro men there to kill Senator Goebel and that it was going to be done that morning, and if my brother was in favor of it, as Golden said he was, I ask you why he would be going to Gen. Collier's with Golden to put a stop to the thing? Why would he want the very thing stopped that, according to Golden, he was in favor of? Why should he? Ask yourselves that question. And why would he be giving the key to my office to a man he had never seen before? And if my brother was in favor of Senator Goebel being killed, why would he have gone to Gen. Collier with Golden to put a stop to it? Why would he not say to Golden that he ought to be killed, that it would put an end to the contest; that Golden would get his office and that we would all get our offices?

That is why these gentlemen say he was killed. Their contention is that we thought it would put an end to everything and give us our offices. If that is true, gentlemen, why did not my brother present

those reasons for having Goebel killed to that blood-thirsty Golden and secure his co-operation in the matter? Golden, according to his own statement, was an open advocate of murder. My brother knew Golden; why did he not say: "See here, you are wrong about that; it is to your interest and to the interest of us all that he be killed?" Why did he not do that, gentlemen, instead of going with Golden to Gen. Collier's to put an end to the very thing with which he is charged?

Why did they come to see me to have the thing stopped, over at the Capital Hotel? According to these, gentlemen, I would be the last man on earth to have stopped it. If there was a man in all that country, among all the people who were in favor of violence and bloodshed and murder and assassination, it was I, if these gentlemen can be believed in what they assert. Golden says that on former occasions that I said to him that Goebel ought to be killed and that I discussed a plan to kill on the street, and in the Capital Hotel, and that I wanted to kill the members of the Legislature. Golden says he knew all that, and that I had personally discussed with him the contemplated acts of violence and murder. Then tell me why, gentlemen, he came to me to have a stop put to all these things? Why did he come to me, the master conspirator, to put an end to violence? Why did he seek me among so many men whom he knew and who were at Frankfort, to put a stop to this proposed shedding of man's blood?

Golden had lived for some two years at Frankfort; he knew a great many men; he knew Goerge Long. He says Long knew him well enough to recommend him for a position; he knew the other men who had been elected on the State ticket. Why did he not go to some of these men and not to me, if he wanted to put a stop to this proposed murder? But he comes over to the Capital Hotel to see me, and when he gets there he does not even talk to me about it. He says that my brother said that he would talk to me about it. He says that my brother said he would talk to me about it, and for him to let my brother do the talking. He says that he did that; that my brother did come and talk to me and that I frowned while my brother was talking to me. What was I frowning about? He said that we all went back over to the Executive building; that we did not talk about the matter on the way over there; that he never did say anything to me about the proposed killing of Senator Goebel by the two negroes.

According to his testimony, gentlemen, he went back to the Executive building without knowing what had been decided upon, about the killing of Senator Goebel by the two negroes. He did not know whether it had been decided to kill him or not to kill him. And yet the fact remains, according to his own testimony, that at no time during that day did he ever mention to a living soul the proposed plan to kill Senator Goebel. He says that he went over to the Capital Hotel to have an end put to the proposed killing, and still he left the Capital

Hotel without knowing what was going to be done about it. According to that fellow's own testimony he never did tell me about the proposed plan to kill Senator Goebel. If his own testimony can be believed he never told a living man on earth—until he told Col. Campbell on his trip to Cincinnati, long after Goebel had been killed.

Is that not a most remarkable state of case, gentlemen, that in the first place, he would come to one whom he had all reason to believe, if his own story can be credited, would not only not hear to his plans for peace and for humanity, and for law, and for order, but would severely reprimand him for his own lack of willingness to kill or to do anything else to hold the office? Is it not remarkably strange that he did not go to some one else? And is it not stranger still that after going over to the Capital Hotel, and then not knowing what was going to be done about it, he made no inquiries concerning it, no revelations about what he had heard, from that good day until he went to Cincinnati some two months afterwards. Is it not strange that he breathed not to a living soul that he had heard on that Monday morning? Is it not strange that he never thought to tell any one until long after Goebel had been killed?

Suppose, Mr. Wyatt, there was a conspiracy on foot to burn your home, and suppose somebody heard a minor conspirator talking to a major conspirator about burning your home, and he went to the minor conspirator and said:

"See here, Mr. Wyatt is a respectable man in the community. He has earned his home by hard labor and hard work and you must not burn his home," and suppose the fellow said to the minor conspirator: "Let's go and talk to the major conspirator about it;" and that he did do this and stood up close, but didn't know what was decided to be done. Suppose that he did not know whether it was decided to burn your home, or not to burn it, and he went away with the two conspirators and did not know what was going to be done about it, and never mentioned to a single soul what was contemplated until long after your home had been burned, and when it was burned, suppose the man alleged to be interested in saving your home said: "It was a damned good thing and I was glad of it." How much weight would you attach to his testimony to the effect that he was opposed to your home being burned? How much credence can you give to Golden's testimony that upon that morning he was opposed to the killing of Goebel and said that it must not be done, and when he did hear that Goebel was killed, said that "It was a damned good thing, and that he was glad of it?"

It is true that I was over at the Capital Hotel on that Monday morning, and it is further true that I would not have been over there at the Capital Hotel unless I had had some business over there. I do not go to such places or go into men's rooms unless I have some bus-

iness with them. These gentlemen intimate that I was there to see General Duke about some plan connected with the killing of Senator Goebel. You heard the speakers in this case yesterday intimate that General Duke was the head of everything. Then, if I was over there to see General Duke on anything connected with the conspiracy to kill Senator Goebel, General Duke is more guilty than I could possibly be, because he is an older man than I am; he knows much more than I do about men and affairs, and if you believe that General Duke was in the conspiracy to murder Senator Goebel, I want to ask you, Mr. Franklin, why you have sat here for over three years and witnessed vile conspirators strike down your party associates and go through this State unmolested, undisturbed, uncondemned and unharmed?

Gen. Duke asked no Governor of any adjacent Commonwealth to protect him from your Courts, or you. You can get service on him seven days and seven nights out of every week of every year. You have not done that. The truth is, Mr. Franklin, you know General Duke had nothing to do with the conspiracy to murder Senator Goebel. Then if he did not have anything to do with it, I could not have been over at the Capital Hotel that morning for the purpose of seeing General Duke on anything connected with the conspiracy to murder Senator Goebel, and if I was not there to see General Duke on any such business, why was I there?

What is the testimony in this case? Silas Jones, a witness for the prosecution, tells you that I agreed to get him a pass to go home. Milton Prossper, a witness for the defendant, tells you that on that Monday morning I agreed to get him a pass to go home, and that he did go home on the 3rd of February. A. V. Hite tells you, and the deposition of Walter Day tells you, that he heard me telephoning over the 'phone from the Auditor's office to Louisville, trying to get transportation for men to go home. And in this connection I desire to call attention to the depositions in this case. Why, it was said but yesterday by attorneys for the prosecution that the depositions did not mean very much; that all there was to it, or about it, was that it was only an affidavit of the defendant. If I do not state the law accurately in this case, I want this honorable Court to correct me. Those affidavits are the depositions of the absent witnesses. It is agreed that those witnesses, if present, would state as in this affidavit if they were present here to testify. It is not my affidavit but the depositions of the witnesses, and if the prosecution had any doubt about those statements being true, they had a right to bring in other testimony to contradict the statements contained in those depositions and they had a right under the law to impeach the witnesses whose depositions you heard read here in your hearing. It is a fact known to the prosecution in this case that Walter Day has

testified on both of my former trials and that he testifies to these various things. Walter Day tells you I was in the Auditor's office telephoning down to Louisville trying to make transportation arrangements to send the mountain men home. A. V. Hite, the depot agent at Frankfort, tells you that he received a telephone communication from Louisville telling him that they had been called up by the Secretary of State's office, and they wanted him to go to my office and say to me that they had made a rate of one cent per mile for the purpose of sending the mountain men home. The testimony in this case is that I called up the transportation agent at Louisville that morning and asked him to send the coaches on the afternoon train, and the testimony further is that I was sent for by Gov. Bradley to come over to the Adjutant General's office in the red brick building, and that Gov. Bradley said to me that he understood that I was going to send the mountain men home. He said I must not send the men home. "There is going to be an argument before some of the contest committee, and you must not send them all home," he said. The testimony is that had it not been for Gov. Bradley those mountain men would have been sent home on Monday, the evening before the killing of Mr. Goebel on Tuesday morning. They say: "Why didn't you call Gov. Bradley to the witness stand and prove this by him?" I hurl it back into their faces and say: "Why didn't you call Gov. Bradley to the witness stand and contradicted me in that assertion if I am swearing falsely about it?" I have sworn it over three years. They have had Gov. Bradley before the grand juries of the country, and they have had him as a witness in the Ripley trial. They know Governor Bradley would not contradict me. Then I would have sent the mountain men home on Monday morning before Senator Goebel was killed, if I could have made the necessary transportation arrangements. The testimony is, that I would have sent them home on Monday afternoon had it not been for Gov. Bradley. Now, the prosecution has always claimed that those mountain men were there, retained in Frankfort, for the purpose of killing Mr. Goebel.

That is their claim. They claim that they were retained in Frankfort, and that the culmination of the dastardly deed could not be reached without the presence of the mountain men; that is their claim. Now, I want you to ask yourselves this question, when you get to your jury room, when it becomes your duty, under your oaths and the law, to pass upon my most sacred rights—ask yourselves this question: "If that young man had known anything about the plan to kill Senator Goebel by the two negroes Monday morning, would he have been trying to send the men home on that Monday morning? If he had known anything about the plan to kill Senator Goebel on Tuesday morning, would he have been wanting to send those men home on Monday afternoon, and the testimony is beyond dispute that

I would have sent them home had it not been for Gov. Bradley. I knew nothing of the plan to kill Goebel with the two negroes. I knew nothing of the alleged key transaction. I know nothing of this alleged conspiracy. I was not a party to it.

Even Youtsey says that I did not know anything about the negroes being ready to kill Goebel, or anything about the alleged transaction of the wrong key between himself and my brother; for did not Youtsey say that after my brother had given him the wrong key to my office, that I came to him and said: "My brother tells me that you have two negroes here to kill Goebel, and that he had given you the wrong key;" and that I then said to him: "I cannot give you the keys to that office, but that it shall be at your disposal." Did not Youtsey say that? If his statement be true about the transaction of the wrong key and the two negroes, I did not know anything of the alleged plan to kill Goebel with the negroes.

On the former trials of this case, these gentlemen prosecuting me, in their speech-making capacity, have sworn to other juries until they were black in the face, that my trying to send the mountain men away on the Monday morning before the killing was a farce; that the statements of witnesses to the effect that, if I could have made the necessary transportation arrangements to have sent the mountain men home on that morning, I would have gone to Louisville to have met a young lady friend of mine, was all hypocrisy and deception. They said that the reason why I did not go to Louisville on that morning was, not because I failed to make transportation arrangements for the men, but because there was a failure in the plan to kill Goebel with the two negroes, from the fact that my brother had given Youtsey the wrong key. And on this theory of the case, they asked other juries to hang me. Now, Youtsey overturns it all and says that I did not know anything about the transaction of the wrong key, or the killing of Goebel by the two negroes at that time, but that I came to him later and told him what my brother had revealed to me.

Golden says when he got to the Executive building he saw my brother give Youtsey a second key to my office. Youtsey says that that is not true. Youtsey says Golden lied about that. Youtsey says he never got but one key to that office from my brother, or anybody else, and that that was the wrong key, and that that was before that time and on the same morning. But when we got back to the Executive building on the morning of the day Senator Goebel was killed, Youtsey says I came to him later on in the day, into his little private office, and said to him: "I understand you have two negroes here to kill Goebel; John Powers told me that, and I want to know what about it." Youtsey says: "That is all true." And Youtsey testified that I then said to him that I could not loan him the key to that office—that he then went with me over to the

glass door leading from the hallway into the private office of the Secretary of State, and that here he said to me: "Now, you can put your foot down on this thing and stop it if you want to. All you have to do to keep Goebel from being killed is to put your foot down on it and it will not be done." But Youtsey says I didn't do that, but that I said: "I cannot loan you the key to my office, but I will fix the door so that, at any time, you want to, you can walk in and make yourself at home. He says that I unlocked and unbolted the little door leading into the private office from the hallway and left it in such condition that anybody who would push against it, could open it. And that he said for me to be away from my office and that I agreed to it. That is his testimony. This is the only conversation, he says, I ever had with him relative to the killing of Senator Goebel.

Now, let us see about that. If his testimony be true—but it is every word a sworn lie—but let us consider for the present that it is true, and look at it from that standpoint and see what it proves. If it be true, then I must have left the door ajar on that day for the purpose of having Mr. Goebel killed by Hockersmith and Dick Combs, after I had found out that they wanted to kill him. The testimony in this case is, that I did not then know Dick Combs, and that I had never seen or heard of Hockersmith. But, of course, a little thing like that could not shake the credence of the story told by this divine lover and server of truth—Henry E. Youtsey. Youtsey said I agreed to be away from my office and that he said to me that I had better be away; that he didn't want me mixed up in the matter, and he wanted me away and I agreed to be away. Cannot you see his solicitude for me? Then, if I agreed to be away from that office on January 29th for the purpose of having the negroes Hockersmith and "Tallow Dick" Combs kill Goebel, I certainly lied to Youtsey, because I was in the office on that very day and I remained in it all the day, and that is the testimony in this case. Then, when Youtsey said that I agreed to leave the hall door open for the purpose of having Goebel killed by Hockersmith and "Tallow Dick" Combs, and that I would also be away from that office, to let it be done from there on that day, he certainly lied about it or I lied to him, one or the other, because I was in my office the whole of that day. Neither Hockersmith nor Dick Combs tried to kill Goebel from that office on that day. There is no proof of it in this record. Then I certainly did not leave that office door ajar for the purpose of having Howard kill Goebel on the next day, for Youtsey says himself that he found that locked on the next day.

But let us look into the matter a little further. Mr. Campbell said in his opening statement to this jury (I am sorry the Colonel made a contrary statement in his speech): "If Caleb Powers gave Youtsey the key, then Caleb Powers should give his life for the life



so ruthlessly taken. If Caleb Powers did not give the key to Youtsey he has gone a long way toward helping the side of the defense in this case. I cannot be fairer than that. I say if Caleb Powers did not give the key to Youtsey, he has broken an important link in our chain of evidence. If he did give it, I believe, as I have to answer to the God above, that I can see no escape from the conclusion of his guilt. I am reminded that I say Caleb Powers. What I should have said was that Powers gave the key. John Powers got it from his brother and gave it to Youtsey."

That is what Mr. Campbell said in his opening statement in this case. He said if he could not show that either myself or my brother gave Youtsey the key to that office for the purpose of having Goebel killed from that office, he would admit that a strong link in the testimony of the prosecution of this case had been broken. Let us see if the Colonel has not almost admitted me not guilty. If the testimony of Youtsey and of every other man who has testified about it can be relied upon, then a strong link in the chain of testimony of the prosecution in this case has been broken, because Youtsey says he never got but one key to that office and that was the wrong key on the Monday before the tragedy, and that he never got a right key from either myself or my brother. That is the testimony of Henry E. Youtsey. I testified that he never did get a key from me. Youtsey says that he did not have any key on the day Goebel was killed, but that he went through an **OPEN DOOR** leading from the reception room into the private office. Then what becomes of this alleged key business? Has it not been eliminated from this case? Have not both the mountain crowd and the alleged key transaction been eliminated? If the testimony can be relied upon, is it not true, that no man who came with that mountain crowd killed Goebel; and is it not further true, that Youtsey did not get the key either from myself or my brother with which to get into my office on the 30th of January.

You remember, gentlemen, it is a part of the current history of this State that on both of my former trials the prosecution have begged the juries of this country to take from me my life on the theory that John Powers gave the right key to my private office to Henry E. Youtsey, and that John Powers did that at my solicitation and at my request. They have asked former juries to take my life from me on that proposition. They not only deceived the former juries in this case and the country at large, but they deceived the Democratic minority of the Court of Appeals of this State, because they said in a dissenting opinion that there was no doubt in their minds but that Youtsey got the right key from my brother and that he had gone into my office through the glass door that leads into the hall way and killed Mr. Goebel from that office. They have not only deceived the juries of the country, but they have deceived the highest

tribunals of this land. Now, the prosecution takes a double somersault from their former position and says that none of what they have formerly claimed is true; that the only thing that is true, is that I agreed to be away from my office when Senator Goebel was killed.

Youtsey says that the outer door from my private office to the hallway was locked and that he had to go through the reception room into the private office to open that door on the 30th of January. Then, if I am connected with Henry E. Youtsey at all, if his own testimony can be relied upon, it is the connection of allowing him to go through that open door on the 30th for the purpose of using that office for murder, and not as the people have been taught to believe, that he got a key from my brother. Is not that true? Have I not stated it fairly? I say if I had any connection with Henry E. Youtsey, so far as the killing of Mr. Goebel is concerned, it must be the connection by leaving that door open from the reception room into my private office for the purpose of having murder committed from there. The other door was locked. Youtsey, Golden and myself all testify to that. Then that door was not left open for the purpose of Youtsey getting in that office to commit murder.

Now, let us take up the testimony in this case and see whether or not I did leave that other door open for the purpose of letting Youtsey go in there to kill Senator Goebel. What is the testimony? The testimony is, even by Col. Campbell's first love and first star witness, Wharton Golden himself, that he came into my private office on Tuesday on which Senator Goebel was killed and said: "Rush up or you are going to miss that train," and he says I went to the door leading to the reception room and locked the door and bolted it on the inside. That is the testimony of Wharton Golden. He testified to that in all these trials, even before Youtsey ever became a witness in this case—even before Youtsey was arrested. Youtsey says the door was open, but Wharton Golden, another star witness for the prosecution, says the door was closed, and that it was locked on the inside and bolted. Now whom are you going to believe, Henry E. Youtsey or Wharton Golden? Wharton is trying to swear himself from getting into the penitentiary and Youtsey is trying to swear himself out of it. You can believe whichever one you want to, or you can stand them both aside and say we cannot believe either one of them; because they are both star witnesses for the prosecution, and they are testifying diametrically opposed, each to the other. What else do we have in this case upon that proposition? Mr. Nickell, who has testified for the prosecution, said that he had some business with Gov. Taylor on the morning of the killing, and while he was sitting in the reception room, waiting to see Gov. Taylor, that he saw some man go into that private office and come out and go into the private office of the Governor. That is the testimony of Mr. Nickell. Now,

Mr. J. M. Hardgrove, a witness for the defendant, says that he was also sitting in that reception room thirty or forty minutes before Mr. Goebel was killed, at the very time Mr. Nickle says he was sitting in there, and Mr. Hardgrove says that no man went into that office during that interval; that he did see some man who he believed was Grant Roberts, go and try to get into that office, and he failed to get in there. Mr. Hardgrove is corroborated by Mr. Roberts, because he says that he did try to get into my private office and failed, because the door was locked, but you can believe Mr. Nickell or you can believe Mr. Hardgrove, just as you like about it. One or the other of them lied. There is no doubt about that. Then, what else do we have?

Golden stands up against Youtsey. They are both star witnesses and as far as I am concerned, you can throw both to the ground and not believe either. Mr. Hardgrove says the man did not go in, and Mr. Nickell says he did. So far as I am concerned, you can throw both of them to the ground and believe neither. Then what do we have?

In addition to this testimony, R. N. Miller tells you that he tried to get into that office between 9:30 and 11 o'clock and he found the door **locked** and he could not **unlock** it. Grant Roberts says that he had some business in the private office of the Secretary of State, and you noticed the manly bearing of that young man Grant Roberts upon the witness stand. He tells you he tried to get into that office on that morning on some business connected with the Auditor's office and failed to get there. Then, if the testimony in this case can be relied upon, Henry E. Youtsey did not go through that door. What else?

Jim Howard says it is all untrue that Youtsey went around through that reception room and let him into that private office. Then what is the testimony in this case? Henry E. Youtsey and Mr. Nickell, upon the side of the prosecution, say that the door was open, and J. M. Hardgrove, Wharton Golden, R. N. Miller, Grant Roberts, Jim Howard and Ben Rowe and myself, all on the other side, say that the door was **locked** on that occasion and that they could not get in there. That is the connection they have between me and Henry E. Youtsey, and what are you going to do about it? Are you going to say that Youtsey is a gentleman and a truth-teller and a Saint? Youtsey says anybody will lie when he gets into trouble, no matter how honest he may be before that time. That is Youtsey's idea. That is what Youtsey said on the witness stand. Then what are you going to do about it? That is the only connection between me and Henry E. Youtsey so far as the death of Senator Goebel is concerned, if his own words can be relied upon. Are you going to say beyond a reasonable doubt that Youtsey is a gentleman and a truth-teller? Are you going to say that Youtsey is the only man in all this case who is entitled to belief? Are you going to say beyond a reasonable doubt that R. N. Miller,

former County Attorney of Breckinridge County, swore to a lie, and that Grant Roberts, the brother of the able editor of the Lexington Leader, swore to a lie, and that J. M. Hardgrove swore to a lie, and that Ben Rowe swore to a lie? Ben Rowe is another man who says he tried to get into that office between 10 and 11 o'clock, and Mr. Franklin called him on the proposition, and said: "Ben, didn't you say on the former trial in this case that you got back to that office and unlocked it about 9:30 when, if Powers can be relied upon, he had locked the door and bolted it on the inside and gone to Louisville?" and Ben says: "I don't remember about that; I don't think I did." But put it as Mr. Franklin wants it. That door was, as a matter of fact, at 9:30, locked from the inside. But let Mr. Franklin take whatever horn of the dilemma he likes. That door, on that occasion, was locked and bolted, or it was locked and not bolted. Then, if it was simply locked, as Mr. Franklin tried to get Ben Rowe to say, then what do we have?

Ben Rowe had a key to the office, W. J. Davidson had a key to the bolted, or it was locked and not bolted. Then, if it was simply locked, the dilemma he likes. That door, on that occasion, was locked and office, and there is no telling how Youtsey got in there. He might have gotten in there through one of those people. Let Mr. Franklin take whatever horn of the dilemma he likes. Then, are you going to say that Miller and Hardgrove and Grant Roberts and Wharton Golden and Jim Howard and Ben Rowe swore to a lie beyond a reasonable doubt, and that Henry Youtsey is a living embodiment of all the manly virtues, and that the testimony of this convict and self-confessed perjurer is entitled to more weight than all these other gentlemen, who are not confessed perjurers, and whose testimony the law does not challenge, but respects? And this connection of this door is the only connection that they have shown between Henry E. Youtsey and myself in this case. What are you going to do about it?

Now let us take up the other door and discuss that in this connection. You will remember that Youtsey said on the 29th of January that I agreed to leave the door that leads from the private office to the main hallway ajar. I have not discussed that door on the morning of the 30th, when Senator Goebel was killed. Let us see in what condition we find that door.

Golden says that I pulled that door to as I went to Louisville that morning; that it was a Yale lock, and that it locked itself; that I pushed against it and that it was locked. He is a witness for the prosecution. I testified in my testimony that the door was locked, and even Youtsey himself says that the door was locked, because he says he took Jim Howard to that door to wait for him while he (Youtsey) went around through the reception room into the private office and unlocked the glass door and let Howard in. So, if the testimony

can be relied upon, that door was also locked. Then you say to me: "Mr. Powers we are of the opinion that the shot was fired from the office of the Secretary of State, and you have proven to us here by the testimony in this case that both of those doors were locked. If that be true, I would like to know how it is, that that shot could have been fired from the office of the Secretary of State?" Why, gentlemen, all we have to do in order to determine this matter, is to go to the prosecution for testimony. They give us an explanation of it. What does Culton say? Culton says that Youtsey said to him away back in January that he had the slickest scheme yet to kill Senator Goebel; that he had a key to the office of the Secretary of State, and he could go in there and pull down the blinds and a man could shoot Senator Goebel and escape through the basement. That is what Culton tells you that Youtsey said to him away back in January. If Youtsey can be relied upon, he did not get that key from either myself or my brother. He never did get the right key from either of us to that office, and he never attempted to get but one key and that was on the 29th of January, the day before Senator Goebel was killed. That is what he says about it. Then, relying upon the testimony for the prosecution in this case, you see how Senator Goebel could have been killed from the office of the Secretary of State. Youtsey told Culton that he had a key to that office or a key that would unlock that office, and Youtsey said that he didn't get it from myself or my brother; that he didn't try to get a key from either of us until the 29th of January, 1900. But how else could the shot have been fired from that office? Why, it is in the testimony in this case that those Yale locks are numbered on the inside and anybody who was in that office could have gotten the number to those Yale locks and gotten a key to fit them. The testimony in this case is that there ought to have been three keys to the side door of my private office that leads into the main hallway, and the testimony is that I never did get but one key to that office when the office was turned over to me, and the two keys are unaccounted for, and some one of those two keys might have been used in getting into that office. The prosecution tells you that the windows to the private office of the Secretary of State were up on the 30th of January. If they were up, or if they could be raised, somebody might have raised those windows from the outside and gotten into that office. Some one could have gotten access to that office in all these ways. You know that burglars roam over the country and can unlock your door and get into your house and get into your money-drawer. There is a noted burglar in the Georgetown jail now. He tells me that he can pass by any door in this town and see the kind of a key that unlocks it and go off and in a half an hour have a key made and unlock that door. If Youtsey is the same expert in getting into offices and making keys and things of that character

as he is in determining the grains of powder in a cartridge; if he has the same knowledge about things of that character as he has about guns, nobody would doubt that he could get into that office. But if what both he and Culton says about it he had gotten hold of a key away back in January that would unlock my private office, and if what Youtsey says, can be believed, he did not get that key, either from my brother or myself.

Then, if testimony can be believed, I did not leave that office open on the day of the tragedy for the purpose of having murder committed from there. Youtsey, Golden and myself all say that the door leading from the private office into the hallway was locked on that day, and R. N. Miller and Grant Roberts, who had business in my office connected with the Auditor's office, and Ben Rowe, the janitor, and Wharton Golden and J. M. Hardgrove and myself all say that the door leading from the private office into the reception room was also locked. Jim Howard indirectly says the same thing, because he said that Youtsey did not let him in that office, as is claimed by Youtsey, and the only two witnesses to the effect that the door was open on the 30th was Youtsey and Nickell. And you know that the door leading from the reception room into my private office was locked and bolted from the inside on that day; for when Goebel was shot and an angry crowd in the street was threatening to mob the occupants of the Executive Building, those in the reception room tried to get into my private office through the reception room door for the purpose of getting the guns in that office with which to defend themselves. The proof is overwhelming, and not contradicted, that that door was locked and bolted on the inside, and Matthews had to climb through the transom in order to get into that private office. Rowe, Miller, Todd, Hardgrove and every one else testifies to that. That fact is not disputed. Then we must conclude that the door leading from the reception room into my private office was locked on the day of the tragedy, and not left open, as Youtsey claims for the purpose of giving himself access to that office in order that murder might be committed from there. And I have explained to you how Youtsey did have access to that office on former occasions, and without my knowledge or consent, if his own and Culton's testimony can be believed. And you remember that thirty-two Yale keys were found in a drawer in Youtsey's little office after Goebel had been killed, and how nearly one of them came to unlocking the glass door to my private office. What was Youtsey doing with all those Yale keys? Answer me that. Now let us take up the claim on the part of the prosecution that I left my office on the morning of the 30th for the purpose of letting murder be committed from there.

Youtsey says that I agreed to be away from my office for the purpose of letting murder be committed from there, and leave it

accessible for murder to be committed, and the Commonwealth says that Youtsey is corroborated in that proposition because they say I was away on the 30th of January, 1900; and they say that in that particular Henry E. Youtsey is corroborated because I was away. It is true, gentlemen, I was away, and I want to say to the Commonwealth right here, that I will risk the fate of my case upon why I was away from Frankfort on that day. Whatever may be said about me up to that time; whatever rash conduct or incendiary speech may have been attributed to me, or has been testified to by anybody who has sworn against me; whatever may have been said upon the side of the defense, so far as I am individually concerned, I am willing, gentlemen, for you to erase from this case all that has been proven in it up to this time and risk my fate in your hands upon the purpose of my trip to Louisville that day. If my trip to Louisville, as is claimed by the prosecution, was in bad faith; if my trip to Louisville was for the purpose, as is claimed by the prosecution, of permitting my office to be used for the purpose of letting murder be committed from there, and for the purpose of being out of the way and trying to take suspicion from myself—I say if that claim on the part of the prosecution be true, it does not matter what else may have been proven in this case, in that event, I would be guilty. I say, if that be true, it does not matter what else may be proven on the part of the prosecution, in that event I am guilty; but I say to you on the other hand, if my trip to Louisville on that day was in good faith, for the purpose of getting a crowd of people, mostly from Western Kentucky, to come to Frankfort to petition the Legislature, as is claimed by the defense, whatever else may have happened up to that time, I am not guilty, because I could not be guilty if I were going to Louisville for the purpose of getting up a crowd of people to come to Frankfort to petition the Legislature, for in that event, if I had known Mr. Goebel was going to be killed, such an act as that on my part would have been a useless and senseless one and such a mission as that would have been the height of nonsense and folly. One of the attorneys on the part of the prosecution said on yesterday: “Why didn’t you go and get your peaceful petitioners from Western Kentucky after hearing that Senator Goebel was killed? What did the killing of Senator Goebel have to do with it? Why did you stop and why did you come back to Frankfort?” You know why. There is not a man in this case but what knows that it would have been as useless and as senseless to plead to the Legislature after Senator Goebel had been killed and when the bosoms of our law-makers were heaving with rage at the dastardly and cowardly crime that had been committed in Frankfort—it would have been as useless, I say, to plead and petition to them when they were drunk with passion and filled with hate—as it would be for a man to beg and plead to the Niagara Falls not to hurt him

after he had thrown himself from its precipice and was going down into the depths of its awful abyss. So, the mission of my trip to Louisville on the 30th of January is a most important matter in this case. If I were going in good faith, I am not guilty. If I were going in bad faith, I am guilty. How are we to determine the purposes of the trip? Let us be fair with each other. How can we determine whether my trip to Louisville was in good faith or in bad faith? We have to determine that from the testimony in this case. Not from what I say about it; not from what the lawyers on the other side of this case say about it. That should not weigh as much as a straw with you one way or the other in the rendition of your verdict. You have to determine that matter from the testimony in the case; and what is the testimony as to the purpose of my trip to Louisville on the 30th of January, 1900?

Golden says he did not know why I was going to Louisville on that day; that, so far as he was concerned, he had a letter from John Henry Wilson to come there, and that that was his business to Louisville, but did not know why I was going or why my brother was going. He did not know why Long and Day were going. He did not know anything about it. So the only man on the side of the prosecution who gives us any reason for my being away from my office on that day is Henry E. Youtsey, and he says that I agreed to be away from my office that it might be accessible for murderous purposes. What has the defense to rebut the testimony of Henry E. Youtsey? It has this: R. N. Miller tells you that on the night of the 29th of January he discussed with me at my boarding house, in Frankfort, the plan of bringing a crowd of petitioners from Western Kentucky on the following day. Walter Day tells you in his deposition in this case that on the evening of the 29th of January between the hours of 4 and 5 o'clock he came into my office and said that Gov. Taylor wanted him and myself and others to bring a crowd of petitioners from Western Kentucky. The testimony is that W. J. Davidson was also a member of that meeting. I testified that the meeting was held. What has the prosecution to rebut that testimony? We say that we were discussing the trip to Western Kentucky and we decided to sleep over the matter that night and meet back at my office early Tuesday morning and decide whether or not we would go to Louisville that day. The idea was that the Contest Committee would decide the case in a few days and if we were to get anybody from Western Kentucky we had to get them at once. These men tell you we did meet back at my office on the next morning. J. Lon Butler, on the witness stand here, tells you that he was called into that meeting on Tuesday morning and that we decided to go into Western Kentucky to get a crowd of petitioners to petition the Legislature. And, as I said to start out with, if we were going to get a crowd of petitioners to petition the Legis-



lature, we could not have known that Senator Goebel was going to be killed, because our mission in that event would have been a useless and senseless one. A man with a spoonful of brains in his cranium would have known that the people would be swept off their feet at such a cowardly and atrocious and brutal murder as that of Senator Goebel. You know that the people at the time were in no state, or frame of mind, to be reasoned with. Butler tells you that we were going to get a crowd of people to petition the Legislature. Day tells you we were going to get a crowd of people to petition the Legislature. So does Davidson, and I testify to that myself. Whom are you going to believe, Day and Davidson and Butler and Miller and myself, or Henry E. Youtsey? You have either got to believe Henry E. Youtsey or you have to believe these other men. Before you can claim my trip to Louisville on January 30th was not in god faith, you have to say that Lon Butler, Walter Day, W. J. Davidson, J. L. Butler, R. N. Miller and myself all swore to a lie beyond a reasonable doubt. What are you going to do about it? After that meeting is over, Day, Butler, Long, Golden, my brother and myself go on to the depot, on our way to Louisville. Lon Butler says that we discussed the trip to Western Kentucky on the train. He said he agreed to get the men on the Illinois Central Railroad. He is a traveling man and lived in that section of the State and was well acquainted throughout the entire Western section of the State. The testimony is, if George W. Long can be believed, that he and I discussed the matter of getting petitioners from Western Kentucky on the train going to Louisville that day; and that we made a list of the stations from Henderson around by Bowling Green and made an estimate of about the number of men we could get and about the cost of transportation. That is the testimony of George W. Long. The testimony is that more than an hour, or about an hour, before Senator Goebel was killed, George W. Long sent two telegrams from Christiansburg to Ed Mentz, of Glasgow Junction; Jim Frank Taylor, of Glasgow, and E. U. Fordyce, of Bowling Green, calling them to Louisville. You heard those telegrams read here by two or three people. They are here and speak for themselves. There is no doubt about that. Here was George W. Long sending telegrams to Ed Mentz, E. U. Fordyce, and Jim Frank Taylor to meet us at Louisville, Ky. Why was this done? Do you pretend to say that George W. Long was in the conspiracy and in the plot? Do you mean to say that he was in the conspiracy and that he, too, was trying to cover up his alleged connection with the crime? Do you mean to say that Walter Day was in the conspiracy and that he was trying to cover up his alleged connection with the crime? Lon Butler said he wrote and Long signed the telegrams. Do you mean to say that Lon Butler was in the conspiracy and that he was trying to cover up his alleged connection with the crime? Do you

mean to say, Mr. Franklin—you, whose sworn duty it is to prosecute all violators of the law in this the Fourteenth Judicial District of the State of Kentucky—you believe they were in the conspiracy and you are not prosecuting them? If you do, you have been false to the people who elected you and untrue to your oath of office. If that be true, you are the worst enemy the State has within its confines this day, although you say it is filled with murderers and assassins. The truth is, Mr. Franklin, you don't believe a word of it. The truth is, you know that Long and the other men were not in the alleged conspiracy. Then, if they were not in the alleged conspiracy, they were not sending those telegrams to Jim Frank Taylor, E. U. Fordyce and Ed Mentz, in an attempt to cover up their alleged connection with the killing of Senator Goebel, and if that is true, why were these telegrams sent? For what purpose were they sent? They were sent, if the testimony can be relied upon, to get E. U. Fordyce, Jim Frank Taylor and Ed Mentz to come to Louisville on the night of the 30th of January for the purpose of helping get up a crowd of petitioners to come to Frankfort from the Western end of the State. That being true, we did not know that Senator Goebel was going to be killed, as heretofore explained. And on the way to Louisville, about an hour after the telegrams were sent, the news was reported through the train that Senator Goebel had been shot from the second or third story of the Executive Building—shot down in the State House Yard. The testimony is, that I said, as soon as I heard it, that it was a shame and an outrage and that it had ruined our chances to win in the contests. That is what I said, men. But Golden adds that I said it sarcastically. He didn't say that the first time he testified in this case. He said nothing about my using those words in a sarcastic manner, but, when he was told by those who have him in charge: "Golden, if you are expecting immunity from the Commonwealth, you must testify for the Commonwealth, and it won't do to say that Powers said upon hearing that Senator Goebel was killed that it was a shame and an outrage, and that it had ruined our chances to win, because, if Powers uttered those words, and said them in earnest, he certainly was not in favor of Senator Goebel being killed; for he certainly knew if Goebel were killed that it would ruin the chances of the Republicans to hold their offices." And Golden changed his story and now says that I uttered those words sarcastically. The prosecution says, when they are confronted with overwhelming evidence of my innocence, that I am a Dr. Jekyll and a Mr. Hyde; that I do not mean what I say, that I am acting a double part, that there was nobody more glad than myself to hear the news that Goebel had been shot down and assassinated. These are the things that these gentlemen say; but I want to leave it to you, if I did not speak the truth, when I said that it was a shame and an outrage when Senator Goebel was shot. I leave it to your

honest hearts, to your own sense of right and wrong, if it was not an outrage when Senator Goebel was shot down like a dog by an assassin's bullet. I leave it to you further, if I did not speak the truth, when I said that it had ruined the chances of the Republicans to win the contest. The whole world knows that the Republicans lost their offices, and didn't I speak the truth when I said it would ruin the chances of the Republicans to win in the contest? Any fool would have known that. Any fool would have known, if Senator Goebel had been shot down from the Executive building, occupied by Republicans, shot down in the State House square, that the Republicans would be charged with it; and if they were charged with it, would not anybody know that it would ruin the chances of the Republicans to win their offices, when they were being contested before Democratic tribunals? Would I not have known, and didn't I know, that such a thing, charged to the Republicans, would make the board of Democratic Election Commissioners decide against me in my case?

We go to Louisville and what else do we have: Jim Frank Taylor was put upon the witness stand in this case for the defense. "Mr. Taylor, did you receive a telegram from Geo. W. Long to come to Louisville on the evening train of January 30th, 1900?" "Yes sir." "Did you come to Louisville in response to that telegram?" "Yes sir." "Did you know why you were going to Louisville before you got there?" "No sir." "Were you informed of the purpose after you got to Louisville?" "Yes sir." "Tell what that purpose was?" "We object, we object," says Mr. Franklin. Why object to letting Mr. Taylor tell this jury and tell this country that he was called to Louisville to help get up a crowd of people to petition the Legislature. You claim to have no desire in your heart to prosecute an innocent man. You claim that you are acting only in the discharge of your official duties; and if that be true, why is it you did not let Jim Frank Taylor tell this jury that he was sent for to come to Louisville to help get a crowd of petitioners to petition the Legislature, from Western Kentucky? Why didn't you do it? And when E. U. Fordyce and Ed. Mentz were put upon the witness stand, they were asked if they had not received telegrams from Geo. W. Long, calling them to Louisville and they said they had, and they read the telegrams here in your presence, and when the question was finally put to them, "Did Geo. W. Long tell you the object of your being sent for to come to Louisville," they said, "Yes." "What was that purpose?" "We object" piped out a chorus of voices on the part of the prosecution. Why did they object, if they had no desire that an innocent man be punished? Why not let the truth in this case come out? Why not let me show that I was on a legitimate mission on the 30th of January and, therefore, could not have known about any plot to kill Senator Goebel? Why don't they deal fairly with me?

As I said to start out with, if my trip to Louisville was in good faith, I am not guilty. If it was in bad faith, I am guilty. Then what are you going to do about it? What is the testimony in this case? Henry Youtsey, a convict in the walls of the penitentiary, Henry E. Youtsey, who has sworn on both sides of this case and both sides of the Howard case, Henry E. Youtsey, who first makes an affidavit that he did not know anything, and then comes up and swears from the witness stand that he knows almost everything, Henry E. Youtsey, who deceived the jury and the country in his own trial by having a pretended conviption fit in the Court-house during the progress of his trial. Henry E. Youtsey, who deceived Arthur Goebel when he told him that he let Tallow Dick Combs and Berry Howard into the private office of the Secretary of State, now comes to this witness stand to deceive you, in the hope of making life bearable in the penitentiary of this State, and finally of roaming over the inviting fields of freedom in payment for his infamy. Be not deceived about it.

It is the same Henry E. Youtsey, who is the only man who tried to give any reason why I went to Louisville on the 30th of January, and I was surprised, Mr. Hendricks, I was sorely disappointed and seriously surprised when you, a man who has been a candidate for the highest office within the gift of the people of the great State of Kentucky, said to this jury upon yesterday in substance, that you endorsed Youtsey's conduct, when he had a conviption fit here in this Court-house and kept the jury from rendering the verdict against him that they otherwise would have rendered. He said Youtsey was smarter than I; that Youtsey had a conviption fit and that I did not. No, I did not; no, I never will. You can turn every stone of this land into a scaffold, every tree into a gallows, every home into a grave and I will yet be found here as long as my frail form stays above the green turf, fighting my case and maintaining my innocence; and if there is any blotch brought upon the fair name of the State of Kentucky by reason of these trials, that blotch will be written upon its pages by the pen of the prosecution. It has never been written, it will never be written by a pen of mine or by my submitting and giving up and having conviption fits, when I know and the God above me knows that I had no more to do with the killing of Senator Goebel than any man on this jury.

Are you going to believe Henry E. Youtsey, or are you going to believe these other men? Before you bring in a verdict of guilty in this case, what have you to do?

As I said to start out with, if my trip to Louisville was in good faith, I am innocent, and if that trip was in bad faith, I am guilty. Then what are you going to do about it? You have Youtsey upon the one hand swearing that my trip to Louisville was in bad faith, and you have R. N. Miller, saying nothing of myself, and Walter Day, and W. J.

Davidson, and Lon Butler, and Jim Frank Taylor, and E. U. Fordyce and E. Mentz and George W. Long and the two telegrams testifying that my trip to Louisville was in good faith. What are you going to do about it? Are you going to say that George W. Long, ex-Treasurer of State, swore to a lie beyond all reason of doubt, when he said my trip to Louisville on the 30th of January was in good faith, when his testimony is not contradicted by a living witness in this case except Henry E. Youtsey, and by him only indirectly? Are you going to say that Lon Butler swore to a lie beyond a reasonable doubt when he said that my trip to Louisville was in good faith? Are you going to say that Walter Day, the ex-Treasurer of your State under the Taylor administration, swore to a lie beyond a reasonable doubt when he said that my trip to Louisville was in good faith? Are you going to do that, when the testimony of Long and the testimony of Butler and the testimony of Miller and Mentz's testimony and the testimony of the two telegrams all sustain, uphold and corroborate each other? What are you going to do about it? Are you going to say that all these men swore to a lie beyond a reasonable doubt when their testimony is not contradicted by a living witness, except Henry Youtsey? Their testimony is not impeached, it is unimpeachable. Then what are you going to do about it? You have sworn that you would try this case according to the law and the testimony, and if the testimony has anything to do with it, there is but one possible verdict and that is a verdict of not guilty. You have either got to say that Ex-Treasurer of State, George W. Long, Treasurer of State, Walter R. Day, J. L. Butler, a trusted traveling man; ex-Superintendent of Public Instruction W. J. Davidson, ex-County Attorney R. N. Miller, Ed. Mentz, Jim Frank Taylor and E. U. Fordyce, all worthy citizens of this State, and the two telegrams and myself are all perjured scoundrels of the Commonwealth of Kentucky, when the testimony of all is unimpeached and is unimpeachable, and when they sustain and corroborate each other, or you have got to say that Henry E. Youtsey is a living embodiment of truth, honor, uprightness and integrity. You either have to do that or you are compelled to find a verdict of not guilty in this case. There is no escape from that conclusion.

Then if you try me by the law and the testimony, and you have sworn that you would so try me, I will be given my liberty. There can be no escape from it.

My friend Wilson gave you an able dissertation on the testimony of Henry E. Youtsey. I cannot spend much more time on it; but you take Youtsey's story itself, as to how the murder was committed, and on the very face of it, you are bound to say it is untrue. You are compelled to discover its falsity.

Col. Campbell said that it did not matter now whether Howard, or Youtsey killed Goebel, that I am guilty, if I can be criminally con-

nected with either of them; that we can take which ever horn of the dilemma we like. But won't you admit Col. Campbell, that if Youtsey has lied against Howard that he is likely to lie against me?

Youtsey says that an unknown man came with a letter and knocked on his office door a few minutes before Goebel was shot and said, "My name is Howard." Youtsey testified that he said his name was Youtsey.

A lovely and attractive young lady, Miss Annie Wiest, who was in an adjoining room to Youtsey's little office, said that none of these things occurred. Howard said that none of them occurred. Is Youtsey's word worth more with you than the sworn statements of Jim Howard and Miss Annie Wiest?

They had never seen each other before. Howard was a stranger in Frankfort. Nobody tells how Howard ever got from the Frankfort depot to Youtsey's office. It is a wonder that the prosecution didn't have some man like Cecil to say that he met Howard down at the depot and took him up to Youtsey's office; but that is a link in the chain of the testimony for the prosecution that is missing. Howard is virtually an unknown man in Frankfort and he goes to the door of an office in the Executive building and knocks and a man opens the door, and he presents that man a letter. What do you think of it? They introduce themselves and they talk no further. They go to the glass door to the private office of the Secretary of State. Youtsey goes around through the reception room and admits Howard to my private office. Up to that time nothing is said by Howard about why he is down there. No conversation has ever taken place as to what the object of his mission is. What do you think of it? Youtsey says that he told Howard after he got into the room that the plan was to kill Mr. Goebel from the window.

Is it not a wonder that Howard did not ask him why he was standing him under the stairway, and what was the necessity for him going under the stairway if he saw anybody, and what was the reason for all that secrecy? Is it not a wonder that Howard did not say to Youtsey, "I've got a letter from Taylor saying for me to report to you. What does he want?" Taylor was certainly not fool enough to tell Howard in a letter that he wanted him to kill Goebel. Youtsey says that he did not tell Howard anything about what was wanted with him until he got him in the room and then he told him that the plan was to kill Mr. Goebel as he came up on the sidewalk. What do you think of it? He says that Howard picked up the gun, and took his bearing, and everything was proper and that he was almost ready to pull the trigger before the thought struck Howard, "What am I to get for this." What do you think of it? Youtsey said you can get anything you want? "I want a pardon for blowing down old George Baker," says Jim. "That is a mighty small thing to ask," says Youtsey. "That

is all I want," says Jim. Think about it, men! Do you suppose Jim Howard is such a fool as to come down to Frankfort and put himself into the office of the Secretary of State and blow down the Democratic leader of the State for the purpose of getting a pardon for the blowing down of a man up in Clay county, when eleven of the jurymen on his second trial wanted to give him his liberty for avenging the assassination of his brother? Youtsey says that is all Howard wanted. Nothing is said about a pardon from Gov. Taylor for the killing of Mr. Goebel. Nothing is said about that. And no application has ever been made for a pardon so far as that is concerned and none has been granted, if the testimony of the Commonwealth can be relied upon.

Do you believe Jim Howard would walk into "the most dangerous trap" he ever saw and blow down the Democratic leader of the State and get himself into a greater trouble than that he was already in up in Clay county and want nothing for it, except to get out of the trouble in Clay? Do you think that reasonable? Howard said to Youtsey, so Youtsey says, "If any trouble comes of my killing Goebel we will exchange affidavits." Why the necessity of exchanging affidavits? Why didn't Youtsey say to Howard: "Never trouble yourself about affidavits. You have no use for an affidavit in this case? There is never going to be any trials in this matter. Governor Taylor is going to pardon us all." Why didn't Youtsey say that to Howard when Howard suggested the making of affidavits? My God, men, Howard down there in the commission of a crime ten fold greater than the one he was charged with up in Clay county, and all he wanted was a pardon for the blowing down of George Baker up in Clay county! That is the only way that Youtsey could explain why he gave that affidavit that Howard was innocent. That is the explanation. Youtsey felt called on to say why he has given that affidavit. What else? Youtsey says that Howard laid out a number of big horse pistols on the sill of the window and said: "When I shoot Mr. Goebel, I am going to fire a dozen shots from all these pistols and am going to make them believe there are a dozen men here." That is the way the prosecution has of explaining the additional shots. What could have been Howard's idea for that? What could have been Howard's idea for calling attention to the place from which the fatal shot was fired by firing from his pistols four or five more shots in there? Is it a silly proposition, a nonsensical proposition. Then you say how were the shots fired? I say I don't know anything about it; but if the testimony of the prosecution can be relied upon it looks very much like Youtsey fired those pistol shots on the way to the basement of the Executive Building, after firing the fatal shot which resulted in the death of Senator Goebel. George Barnes tells you that he smelled smoke in the hallway of the Executive Building. Smoke always goes up, never down. It might have come up the steps into the hallway of the Executive Building. The truth

is, Youtsey did have a pistol in his hand when he came around through the basement back into the Governor's office. I say I do not know anything about these things, but reason dictates that it must have been that way.

Then there is another thing about Youtsey's story, that brands it as a falsehood. Youtsey says Howard recognized Goebel down at the gate and Youtsey says he ran out of the room. If Howard recognized Goebel at the gate, Howard knew Goebel and it was not necessary for Youtsey to stay in the room to point him out. If Youtsey did not fire the fatal shot himself, why is it, pray tell me, that he didn't step over into the Auditor's office or into the reception room and be with a number of individuals who could swear that he did not fire the fatal shot that resulted in the death of Senator Goebel? Why didn't he do that if he didn't fire the fatal shot himself? Why is it that after the fatal shot was fired, Youtsey says he became panic-stricken and ran down through the basement into the barber shop and into the hands and presence of those who opposed him politically? What was the necessity for Youtsey to be scared if everybody in the Executive Building was implicated in the murder of Senator Goebel? Why did he run into the bosom of his foes instead of into the bosom of his friends? Why does he run so much from those in the Executive Building, if they are his friends, and if they indorsed the murder of Senator Goebel? Think about it, gentlemen.

What means all this talk about smokeless powder, if Howard fired out of the room a number of pistol shots, with ordinary black powder, as Youtsey says he did? Why was it necessary for Taylor, on the 26th of January, to dictate a letter to Youtsey to be sent to Jim Howard, some 200 miles away, to come to Frankfort for the purpose of killing Goebel, when Hockersmith, and Johnson and Youtsey were daily seeking and opportunity to kill Goebel, if Youtsey can be believed? Why the necessity of sending after Jim Howard to come and kill Goebel, if the whole State House square was filled with desperate mountain assassins? That is what the prosecution claims, and yet out of all the bad mountain men in Frankfort, none were bad enough to kill Mr. Goebel, and Howard had to be sent for, if the prosecution can be relied upon. Why didn't Taylor send a messenger after Howard instead of sending a letter; that letter might speak in thunder tones against him some time? The reason why the letter idea was relied upon by the prosecution in preference to the messenger idea, is that the falsity of the messenger idea could be exposed. The messenger would have been compelled to have road on trains, stopped at hotels and come into contact with people. But no such opportunity was given the defense to expose the letter idea. Many thousands of letters pass through the hands of the postal authorities daily. None of them could testify with any degree of accuracy, whether Taylor



wrote to Howard on the 26th of January or Howard wrote Taylor, or neither to the other. Youtsey said that he took the letter from Taylor to Howard down in short-hand and transcribed it and gave it to Taylor. He did not give his short-hand notes to Taylor. Where are his short-hand notes containing this letter? Why have they never been produced in Court? The production of the short-hand notes would be evidence that the letter was written. Where are they? Echo answers where?

Gentlemen of the jury, I would like to call your attention to a great many more things concerning Henry E. Youtsey, but I shall weary your patience with but a few more of them. I want to call your attention to this agreement, which was made down at Louisville between Henry E. Youtsey and myself, and give you my reasons for doing that, and I ask you to put yourselves in my place and see what you would have done under like circumstances. Suppose, Mr. Booth, that the prosecution in this case had charged you with the murder of Mr. Goebel, as they have me charged, and that you were exactly in my place. Suppose that it had long been the contention of the prosecution that the shot which murdered Senator Goebel had been fired from your office as they claim it was fired from mine. Suppose as a matter of fact that Henry E. Youtsey was seen to run down the stairway and through the basement immediately after the fatal shot was fired, and suppose it was the claim of the prosecution that you had given Henry E. Youtsey a key to the office for the purpose of having the murder committed from there. They had convicted you on two former trials on that plea. You had not done it, as it turns out now in this case neither myself nor my brother gave Youtsey the key to enter that office on the 30th of January, if the prosecution can be relied upon; but, suppose they were pretending you had done that at the time you got the agreement from Youtsey, and had on former occasions asked that you be hung for doing that very thing. Suppose it was a known fact that within a few hours after Youtsey had been arrested he had made a confession in the case which was false; that he had implicated innocent men; that he had told Arthur Goebel that Berry Howard and "Tallow Dick" Combs were in the room, and, relying upon the truth of his statements, (Mr. Goebel was trying to get at the men who had killed his brother, and I don't blame him for that, neither does anybody else), but suppose Youtsey had done that, and innocent men had been dragged into the matter by reason of Youtsey's lies.

Suppose, when your trial came up in 1900, that there were days and days that Youtsey was trying to make a deal with the Commonwealth's attorneys and the prosecution for immunity, if he would testify. Suppose that deal was almost consummated at one time. Suppose that when Youtsey's own trial came up that instead of Youtsey testi-

fying in his own behalf, that he had conviption fits, and lay on a cot, apparently unconscious, for days during his trial. Suppose all these things, and suppose that after he got down to Louisville he gave up his fight and said he was not going to carry his case any further. He had contended to you all the way through that he was innocent; that he knew nothing about the murder of Mr. Goebel; that he did not know anything about where the shot was fired from, nor who fired them; that he did not know anything about it at all. Suppose he had made these statements to you, as he had made them to me, and after he got down to Louisville, he said: "I am going to give up my fight; I am going to the penitentiary for life. I am not guilty, but I am not going to risk my life any more." Suppose you knew that he was going down there into that living hell, the penitentiary of this State, and suppose you knew that the prosecution claimed that Youtsey was the key to the conspiracy and that he could unravel everything. Suppose you knew he could easily implicate you by saying he had gotten a key from you to get into your office. He didn't do it, and it turns out now that, as against me, he didn't do that. But how easily he could have said he did get it, and how dangerous to you such a statement would have been. Suppose you suggested to him: "Youtsey you are going down to the penitentiary. In all probability they will make it pretty hard for you and I would like for you to sign a statement which is true that you never had any connection with me so far as the killing of Mr. Goebel was concerned. Youtsey says: "All right, I will do it; I will sign the affidavit. I signed an affidavit for Jim Howard a few days ago and I am perfectly willing to sign yours. Go draw it up." And suppose you do go and draw it up and he says: "I don't believe I will sign it until I consult my attorneys, and whatever my attorneys say about it is all right." Suppose he writes up to L. G. Crawford, his half brother, who defended him, and his half brother knew all of his secrets, knew that he knew nothing against you, and his half brother agreed that he could sign and swear to the affidavit and his half brother sent it back to him for him to sign and after he got it back he says: "I won't sign that paper." Youtsey thinks in his mind: "I have been sidetracking the presecution all the way through. I thought I had them sidetracked before they arrested me, and I have sidetracked them into the prosecution of innocent men, Dick Combs and Berry Howard. I had a conviption fit and sidetracked the jury. I am as great an actor as Booth ever was. It may be that when I get to the pentitentiary I may want to get out or get an easy job in there." Suppose he didn't know anything against you. You are innocent, but what would you do? Would you not try to get an affidavit from Youtsey exculpating you, even though he did not know anything against you, when most of the testimony against you was alleged statements of alleged conspirators, swearing for immunity? That

is what I did, but he would not sign the affidavit unless I would agree that he (Youtsey) would waive the truth or falsity of what he was to swear to, and I refused to take it under those terms for a few days; I didn't want it that way; I wanted a clear cut affidavit without the waiving of anything; but I could not get it; Youtsey would not give it to me, but he said if you will let me write that agreement here I will sign the affidavit, and he writes this agreement:

"This agreement made and entered into this 26th day of January, 1901, by and between Caleb Powers, now under conviction as a conspirator, and Henry E. Youtsey, under conviction as a principal in the murder of Gov. Goebel.

"Witnesseth, that for the purpose only of enabling the said Powers to clear himself of all connection with said murder, the said Youtsey agrees to, and does, sign and swear to the following affidavit, waiving its truth or falsity."

I do not waive anything. I do not agree to waive anything. Youtsey was the man who was waiving the truth or falsity of that affidavit, and not me. I thought it would be better for me to get an affidavit from Youtsey of that character than to get none at all. I may have made a mistake about it. All people in this country do make mistakes, but this was my notion about it: That if Youtsey signed this affidavit and ever turned up in Court to testify against me, as it was said by everybody that he would some time become a star witness, I thought it better to have Youtsey swearing on both sides of the case. I could show if he ever did swear at any time that I was guilty, that at another time he swore I was innocent, and no jury can believe a man who swears on both sides. That was my idea and those are the reasons why I took the affidavit under those conditions. I may have made a mistake. We are all short-sighted, weak human beings, and all liable to err and I may have made that mistake, but I don't think I did. I did not think I was making a mistake then; I do not think it now. Youtsey is not the only man from whom I have gotten statements, before they left the Georgetown and jails for the penitentiary. Jim Jackson, Bob Bronhom, Riley, Binkley, Burley and many others have given me statements before leaving to the effect that I had not said anything in their presence while in jail even tending to show that I had the remotest knowledge of the killing of Goebel. I knew that these men were going to a living tomb and I did not know but what some of them might be induced to testify against me in the hope of getting out. I thought the same think about Youtsey, and took his statement. I was guarding against possible perjury.

Now, a few more things in regard to Youtsey. Mr. Hendricks claimed that when Youtsey was at my office window with a gun on Saturday, January 27th, just after the Berry-VanMeter contest, that I was trying to get Youtsey in a compromising position; that I was

trying to manufacture evidence for myself; that I was a Dr. Jekyll and a Mr. Hyde; that I did not care what testimony they had against Youtsey; that I expected to be able to say in the future, if I needed to say it, that I advised Youtsey against violence and bloodshed and all that kind of business; and that I went and got McKenzie Todd to get him to talk to Youtsey, not for the purpose of preventing Youtsey from doing violence, but for the purpose of manufacturing testimony for myself. Why, if the claims of these gentlemen can be relied upon, I was the last man in all the world to need testimony, because it is their contention that the killing of Mr. Goebel was going to settle the contest and give the Republicans their offices. If that contention upon the part of the prosecution is true, I am the last man in all the State of Kentucky to need testimony. And from another standpoint, do you think I would go into the thing if I thought I would need testimony or that I was ever going to be called up in Court about it? If I was ever going to be called up in Court about it I would lose my office, the very thing for which I was contending, and for the purpose of holding which, these gentlemen allege I entered into a conspiracy to murder Goebel. They say I was acting a double part when I went to my office, where I had a right to go, and where duty called me. I happened to find Youtsey in there. He was there without my permission or authority, if his own testimony can be believed. I said to him: "What are you doing at that window with a gun?" What ought I to have said to him? And when he didn't give me the satisfaction I demanded, I went to get somebody to talk to him. I found Todd. Counsel for the prosecution says I ought to have kicked him out of my office. I answer it has never been my custom in life to try to control men by brute force, and I simply went and got Mack Todd to talk to him and he did go in and talk to him.

Why, if it were a conspiracy for Henry Youtsey to be at my window with a gun, why was it not another conspiracy for him to have been at another office window with a gun? If it was a conspiracy on my part to happen to see Henry Youtsey at my private office window with a gun, why was it not a conspiracy on the part of Mack Todd and George Hemphill and these other people who happened to see Youtsey at another office window with a gun? Is it more of a crime on my part to have seen him at one window with a gun than it was for Todd and Day and Stone and Hemphill and others to have happened to have seen him at another window with a gun? None of these men ever went and got anybody to talk to Youtsey in order that he might be dissuaded from his rashness. None of them has ever been charged with the murder of Senator Goebel, or with procuring Youtsey to kill Senator Goebel. I did get McKenzie Todd to dissuade Youtsey from indiscreet conduct. Col. Hendricks, in trying to convince the jury and the country that I am guilty, said: "If Powers is not guilty, why

was he indicted? Nobody has ever heard of Day, John S. Sweeney, Clifton J. Pratt, John Burke and other State officials, who were on the same ticket with Powers, being indicted?" Yes; that is true, and it is further true that Youtsey was the private stenographer of Rev. John S. Sweeney and got the rifle out of the vault of his office with which Goebel is alleged to have been killed. It is further true that Youtsey, from a desk in the Auditor's office, was ordering smokeless powder cartridges and having talks with Dr. Johnson and entering into conspiracies with the negro, Hockersmith, to kill Goebel, and saying to Day that if he had \$300 he could settle the contest. Nobody ever heard of Rev. Sweeney advising with Youtsey. Youtsey said to John Ricketts in the office of Lucas Moore, Commissioner of Agriculture, that his job depended on Goebel's death. It was there where Youtsey said to Culton that he had the slickest scheme yet to kill Goebel. It was there where all the guns were stacked. Nobody has ever heard of Lucas Moore being charged with the murder of Mr. Goebel. Nobody has ever heard of Sweeney, or Pratt, or Burke, or Throckmorton, or Day, or any of the rest of the State officials trying to put on foot a Goebel. I did that. Does that make me more guilty than they? None of them ever employed J. B. Mathews and sent him to see Miss Weist, who was in adjoining rooms to Youtsey, when the murder occurred, and see what she knew about his condition. I did that. Does that make me more guilty than they? None of them went to John and William Sweeney, Jr., and Grant Roberts, who were employed in the same office with Youtsey, and who were likely to know of his conduct and actions, and say to them: "Youtsey's actions have been suspicious. I think the guilty connected with the murder of Mr. Goebel should be exposed." I did that. Is such conduct as that proof of my guilt, and proof of their innocence? None of them ever said to J. B. Mathews and McKenzie Todd and others, that he felt that a full and complete investigation should be made of Goebel's murder. I did that. Does that make me more guilty than they? None of them ever called in Detective Griffin, of Somerset, Kentucky, at the instance of J. B. Mathews and George Hemphill, and put him to work on the case, under the assurance that he was an honest detective and would let the facts remain as he found them. I did that. Is that proof of my guilt? None of them tried to get the Louisville defense committee, through counsel, to set apart a portion of that money to pay detectives to unearth the murderer of Mr. Goebel. I did that. Is that a circumstance against me? None of them, failing in that, said to Detective L. R. Griffin, to go ahead with the work, expose the guilty, if he could, and get his pay from the Reward Commission. I did that. Will you find me guilty for doing that?

None of them ever sent J. B. Mathews to Indianapolis Ind., to see Charles Finley and see if he knew anything about the two missing

keys to the glass door of the private office of the Secretary of State, that they might know whether or not they were used in connection with Goebel's murder. I did that. None of them ever went to Gov. W. O. Bradley and Judge Yest and said to them, "We have been investigating the Goebel murder, and that they believed that they would go and lay before Mr. Franklin, the Commonwealth's Attorney, all the facts in their possession, to the end that the guilty might be exposed and apprehended. I did that. And yet Col. Hendrick asked: "Why did they charge me with the Goebel murder and did not charge to other State officials?" I am sure that none of the State officials he named had the remotest connection with Goebel's murder, but none of them are more innocent than I. So far as the testimony appears, McKenzie Todd and myself are the only ones who tried to dissuade Youtsey from his rashness before Goebel was killed and Todd did that on two occasions at my instance, once on the Saturday before Goebel was killed, when Youtsey was in my private office with a gun, and once on the Monday morning before the killing in the hallway of the Executive building. Both McKenzie Todd and myself testified to these things. No Republican official at Frankfort, so far as the testimony appears, spent his means in trying to expose Goebel's murderers. I did that, and yet they say I am guilty. If every man should be indicted before whom Youtsey did an indiscreet act, why don't you indict Walter Day, McKenzie Todd, George Hemp-hill, S. B. Stone, R. N. Miller, John Ricketts, Grant Roberts, Frank Johnston and many, many others?

Whatever I do, and wherever I go, and whatever I say, these men construe it against me. If I go up the road, they say I ought to have gone down. If I say one thing they say I ought to have said another. If I do one thing they say I ought to have done another. They say when Burton was in my office at that meeting making that incendiary speech and I called him down and said, if violence is to be contemplated, and, if this meeting has for its object the murder of anybody, I propose to withdraw from this meeting and have nothing further to do with it. Mr. Hendrick says the idea of Powers saying that he would withdraw and have nothing further to do with the meeting! The idea of Powers resigning his office! The idea of Powers going home! He says it is a ridiculous proposition. What if I had done anything else on that occasion than what I did? What if I had come to the conclusion that the meeting was being held in my office and that the people who were assembled in that office occupied the relations of one's guests and that I, therefore, should say nothing, even if they were indiscreet, what would the prosecution have said in that instance? They would have said that you endorsed Burton's conduct by not getting up and saying that you would not stand for anything of that kind. What if I had sat quietly by and said nothing? They would have said

that I endorsed every word that Burton said, and rejoiced at it in my heart, and when I did call him down; when I did tell him that I did not propose to be a party to such a thing as that, these men say that I was acting a double part and that I didn't mean it. It is be damned if you do, and be damned if you don't. Whatever road I take; wherever I go, these men say I am acting a double part. Mr. Hendrick said that because I testified on the witness stand with calmness and deliberation that I was swearing to lies. What if I had testified in any other way? What if I had been darting and scouring over that platform and jumping at every proposition? They would have said: "Of course he is guilty." Whatever I do, they ask you to find me guilty for it. Down in Louisville, when I am alleged to have said to Golden: "I have made a mistake in coming down here; let us get back to Frankfort on the first train—that was the 30th of January—they say that I said that because I had made a mistake by leaving Frankfort the day that Senator Goebel was killed, and that the thing to do was to return to Frankfort on the first train. What if I had remained in Louisville, what would they have said? They would have said: "He was afraid to go back where the bloodshed, assassination and murder had been done in his absence." They say I am guilty because I left my office on the morning before Senator Goebel was killed and doubly guilty because I returned to it after he was killed. So, whatever I do, they ask you to convict me for it. After the shooting was over I began to make in vestigations as to who fired the fatal shot that resulted in the death of Senator Goebel, but I believe I am not permitted to speak as to that because the prosecution objected to that evidence and it was sustained.

When Grant Roberts was put on the witness stand and the question was put to Roberts: "Is it not true that you had a talk with Caleb Powers in his office after Senator Goebel was killed, and is it not true that he said to you on that occasion: 'They are claiming this shot came from my office; I am satisfied it did not, but I want you to make all the investigations in your power to unearth the guilty and to uncover the truth?'" and there came from the side of the prosecution a chorus of objections to Grant Roberts' answering that question. Why did they object to me showing I did what I could, lent all the assistance I could, to unearth Goebel's murderer? Mr. Hendrick said yesterday that I had talked with Gov. Bradley and Judge Yost about it. I did have a talk with Gov. Bradley and Judge Yost about going to Mr. Franklin and laying before him all the facts I had found out with reference to the killing of Mr. Goebel. They say I was acting a double part; that I was trying to take suspicion from myself, and when Mack Todd was put upon the witness stand and asked this question: "Todd, did you have any conversation with this defendant, after Mr. Goebel had been killed, in the hallway of

the Executive Building, and did he say to you upon that occasion that they were claiming the shot came from his office, and I want you to say they were claiming the shot came from his office, and that he wanted you to use all the power you could to ascertain the truth of it; that so far as he was concerned, that he had nothing to fear, and that he wanted a full investigation of the affair?" There came a chorus of objections from the side of the prosecution. Why object; why do they keep it from you, that I did whatever I could to unearth the murderer of Senator Goebel, and that I employed Mathews to help run the murderer down? Why object to me exposing the guilty? If I had been implicated with Youtsey, I certainly would not have been trying to expose his guilt, because, in that event, I would be exposing my own guilt. Cecil said that on Monday night, before Goebel was killed, that I said that there was a fellow across the hall (meaning Youtsey) who wanted to kill Goebel the other day, and that I would not let him do it, because I was afraid to trust him. Youtsey said that I was telling him on the morning of the same day that I was not afraid to trust him, and was planning with him to have the shot fired from that office. Cecil testified that I was **alone** when I said that to him. Youtsey testified that I was **alone** when I said that to him. The testimony of the one contradicts the other.

Cecil is under indictment, and is swearing for immunity. Youtsey is in the penitentiary of this State, and is trying to swear his way to liberty. The law challenges the testimony of them both, and says that it cannot be believed unless it is corroborated. They contradict each other. McKenzie Todd, who was formerly a witness for the prosecution, told you that both he and I were trying to prevent Youtsey from doing acts of violence the Saturday before Goebel was killed, and that on the same Monday morning, when Youtsey says I was endorsing murder, when I was **alone** with him, Todd tells you that both he and I were advising Youtsey against rashness, and that he did it at my instance. The testimony is that I happened to meet Youtsey in the hallway that morning, and that he waited in my office, and remembering what his conduct had been on the Saturday before, I went and got Todd to talk to him again. Todd knew him well. These were the only occasions I ever came in contact with Youtsey, except when I took the oath of office the first of January, 1900. I scarcely knew Youtsey. If Youtsey can be believed, he is the man who was seeking Goebel's death, not I. It was Youtsey, with Dr. Johnson, who first talked of the murder of Mr. Goebel. It was Youtsey who said that Johnson wanted to kill him from the very start, and that the start was when Johnson came before Youtsey to be sworn to an affidavit. It was Youtsey, with Johnson, who searched through a vacant room on the second floor of the Executive Building, hunting a place from which to kill Goebel. It was Youtsey, with Dr. Johnson, who



examined the hallway windows and doors of the executive building in search of a suitable place from which to fire the fatal shot. It was Youtsey, with Johnson, who examined the private office of the Secretary of State, when I was in the mountains of Kentucky, with the view of firing the fatal shot from there. It was Youtsey, with Johnson, who decided that that office was the place from which to fire the shot. It was Youtsey who ordered smokeless powder cartridges from Cincinnati, with which to kill Goebel, on the 22nd of January, when I was in the mountains of Kentucky. It was Youtsey who told Johnson that the cartridges go with the gun after he had received them from Powell, Clements & Company, of Cincinnati. It was Youtsey who stole a Marlin gun belonging to Grant Roberts from the vault in the Auditor's office, and carried it into his own little office, preparatory to killing Mr. Goebel. It was Youtsey who carried that gun into my private office, when I was in the mountains of Kentucky, trying to get men to come to Frankfort as witnesses before the contest boards. It was Youtsey who placed Johnson in that office in my absence, and tried to kill Senator Goebel. It was Youtsey, with Johnson, who mapped out how the assassin should escape from that office after the fatal shot was fired. It was Youtsey, with Johnson, who planned that he should run down the basement and through the basement and around and back into the hallway of the Executive Building. It was Youtsey who ran that route, following the firing the fatal shot. It was Youtsey, with Johnson, who told Culton that he had the slickest scheme yet by which he could kill Senator Goebel; that he could kill him from the office of the Secretary of State and escape through the basement. It was Youtsey, with Johnson, who discussed a plan to kill Senator Goebel in his room at the Capital Hotel with nitroglycerine. It was Youtsey who would have favored that but for the fact that his wife had some relatives boarding at the hotel. It was Youtsey who sought the negro Hockersmith to kill Goebel, after his and Johnson's plans had failed. It was Youtsey who took Hockersmith into his private office and sought his services to kill Senator Goebel. It was Youtsey who took Hockersmith into the private office of the Secretary of State with a view of having Goebel killed from there, and in my absence. It was Youtsey who showed Hockersmith the gun and cartridges he had prepared with which to kill Goebel. It was Youtsey who was disappointed when Hockersmith failed to kill him. It was Youtsey who then set about trying to get some one else to do it. It was Youtsey who told John Ricketts that his job depended on Goebel being killed and Taylor holding his seat. It was Youtsey who said that he had \$100 to put up to that end. It was Youtsey who told Walter Day that if he had \$300 he could settle the contest. It was Youtsey who made the proposition to some of the mountain men at Frankfort to kill Goebel. It was Youtsey who

dreamed that he saw some of the mountain men kill Goebel. It was Youtsey who had the killing of Goebel so much on his mind that he even dreamed about it at night. It was Youtsey who said that Howard knocked on Youtsey's private office door on the morning of the 30th, but Miss Weist, a beautiful and attractive young woman who occupied an adjoining room to Youtsey, said that did not occur; that the door between her office and Youtsey's was open on that morning and that Youtsey was not in that office at all that morning, and that no one knocked on his office door. It was Youtsey who had advised the young lady to leave her office a few days before, because he said that trouble was going to come up. It was Youtsey who had his gun with him on that occasion. It was Youtsey who was sitting both at the reception room window and at a window in the private office of the Secretary of State with the window hoisted, the blinds pulled down and a Marlin gun across his lap. It was Youtsey who said to Culton about the middle of January that he had a slick scheme to kill Goebel from the private office of the Secretary of State; that he had a key that would unlock the door of that office and that he could get in there any time he wanted to, by means of that key. It was Youtsey who said that he did not get that key from either myself or my brother. It was Youtsey who said that he never did get any key from me, and that he never tried to get any key from my brother until the 29th day of January, the day before Goebel was killed. It is Youtsey who says that he never did get the right key from my brother; that the one he got on the 29th of January failed to unlock the door.

It was Youtsey who ran, panic-stricken, down the stairway and through the basement after Goebel was killed. It was Youtsey who said to S. S. Shepherd that if he had his way that the contest would soon be settled. It was Youtsey who said that everybody was kicking on him killing Goebel, and that he would have to drop it. It was Youtsey who wanted an alibi after Goebel was killed. It was Youtsey who asked Culton if he could not place him up in the lobby of the Legislature with Culton and swear that he was up there when Goebel was shot. It was Youtsey who refused to tell Frank Johnson where he was when Goebel was shot. It was Youtsey who wanted to send Grant Roberts \$20 for his gun after Goebel was killed. It was Youtsey who tried to buy John Mastin's gun before Goebel was killed, and intending to use it for the purpose of killing Goebel.

It was Youtsey who began making confessions six hours after he was arrested. It was Youtsey who told Arthur Goebel that he had let Dick Combs and Berry Howard into the private office of the Secretary of State just before Goebel was shot. It was Youtsey who says he lied when he did this, but that he did it in order not to harrass Mr. Arthur Goebel's mind. It was Youtsey who, by lying to Arthur Goebel, had Berry Howard and Dick Combs arrested and indicted on

the charge of killing Senator Goebel. It was Youtsey who permitted Dick Combs to be dragged from jail to jail and to lie behind prison bars for many months. It was Youtsey who let Berry Howard be put upon trial for his life, and never breathed a word to the prosecution that Berry Howard was an innocent man and that he had lied when he told Arthur Goebel that Berry Howard was in the private office just before the shooting.

It was Youtsey who had conniption fits when put upon trial for his life. It was Youtsey who said that he did that for the purpose of deceiving the Court, the jury and the country. It was Youtsey who said that, as a matter of fact, that he had no fit, but thought it was the best thing to do under the circumstances. It was Youtsey, who lay upon a cot during the most of his own trial, apparently unconscious of what was going on about him. It was Youtsey who always maintained to his own dear wife that he was innocent of the crime charged against him. It was Youtsey who refused to appeal his case, and went to the penitentiary for life. It was Youtsey who made an affidavit before he went to the penitentiary that he had did not know and had not seen Jim Howard until long after Goebel had been killed, and now swears he swore a lie upon that occasion. It was Youtsey who made an affidavit before he went to the penitentiary to the effect that he knew no circumstance, even remotely, to connect me with the killing of Senator Goebel. It is Youtsey who says that when he swore to that that he swore a lie. It was Youtsey who said that anybody would swear to a lie when he got into trouble and was trying to get out. It was Youtsey who was kept on bread and water for eight consecutive Sundays in the penitentiary of this State before he became a witness in these cases. It was Youtsey who was put to firing a furnace in the hot days of July and August before he ever testified for the Commonwealth. It was Youtsey who testified that the Warden of the penitentiary and others advised him to tell what he knew. It was Youtsey who wrote out a statement of what he said he knew and sent it to Judge Cantrill. It was Youtsey who burned that statement, together with his short-hand notes of it, when it was returned to him, because it was not satisfactory.

It was, in all probability, Youtsey who failed to implicate me in that statement. It was Youtsey who told Col. Campbell in a statement a few hours after he was arrested that **he never discussed with me the killing of Goebel from my office.** It is Youtsey who now says he lied about that. It is Youtsey who says that I agreed to leave my office door open for the purposes of letting murder be committed from there. It is Youtsey who says that the door leading from the reception room into my office was open on the morning of the 30th of January before Goebel was killed. It is Youtsey who is contradicted in that By Ben Rowe, the janitor; R. N. Miller, a clerk in the reception room;

Grant Roberts, the brother of an able newspaper editor of this State; J. A. Hartgrove, who was in the reception room and saw some one try to enter my private office thirty or forty minutes before Goebel was shot, but failed. It is Youtsey who contradicts Golden, who says he saw me lock that door from the inside and bolt it before leaving for Louisville on the morning of the 30th. It is Youtsey who is contradicted by Jim Howard, who says Youtsey did not let him into the private office on that day, and lastly, Youtsey is contradicted by my own testimony.

It is Youtsey who is the alleged key to the alleged conspiracy. It is Youtsey who failed to tell us when and where the conspiracy was entered into to kill Goebel and who were present. It is Youtsey who connects nobody with the alleged conspiracy, except he talked to them **alone**. It is Youtsey who had an alleged private talk to my brother, and an unknown man to Youtsey, about the alleged wrong key to my office. It is Youtsey who had an alleged **private** talk to Jim Howard, an unknown man to Youtsey, about killing Senator Goebel. It is Youtsey, who had an alleged **private** talk to W. J. Davidson about getting into my office. It is Youtsey who meets this one here and that one there and has a **private** talk to them and connects them with the murder of Mr. Goebel. It is Youtsey who said he knew nothing incriminating against Charles Finley. Although Finley has loudly and long been denounced as a conspirator. It is Youtsey who never had but one talk with me about the murder of Mr. Goebel, and that was the day before Goebel was killed, if Youtsey's own testimony can be believed. It is Youtsey who says that he had that talk with me when I was **alone**, and in that talk with him when I was **alone** that I agreed to be away from my office. It is Youtsey who says that I left my office on the morning of the 30th of January for the purpose of permitting murder to be committed from there. It is Youtsey who is contradicted in this by R. N. Miller, George W. Long, ex-State Treasurer; Walter Day, another ex-State Treasurer; J. Lon Butler, a trusted traveling salesman for a large wholesale house in Baltimore; E. U. Fordyce, Jim Frank Taylor and Ed Mentz, all reputable men, and also myself. It is Youtsey who said that I was away from my office on a sinister purpose, while all these other men say that my trip to Louisville on that day was for the purpose of getting up another crowd of petitioners to come, mostly from Western Kentucky, to petition the Legislature.

Is there a man on this jury who believes that I had the remotest connection with Henry E. Youtsey in so far as the killing of Senator Goebel was concerned. If there be one, let me bring this matter home to you by an illustration. Suppose, Mr. Layson, when you were coming down the streets of Georgetown—coming here to serve on this jury—that you saw a young man sitting in front of one of these saloons here, and he asked you to get him a drink. You knew nothing of

the young man. You had seen him around town here once or twice in your life.

You did not know where his parents lived; you knew nothing of him or about him; he stopped you on the street and said to you: "Mr. Layson, I want a drink of whiskey. I want you to go in and buy it for me, or loan me the money with which I can buy it. I am dying of thirst; I have got no money and no friends here; but for the sake of my burning appetite and for me, I want you to loan me just one dime to get a drink;" and you say to him: "Young man, I cannot do it. To begin with, it is a violation of the law for me to loan you any money for such a purpose. And if I could loan it to you, without any infraction of the law of this town, I would not do it. You are a young man; upon the young men of this State and this Union depends its perpetuity and its progress. I never started any boy on the road to ruin; I cannot start you. Young man, listen to the advise of an older head. Liquor contaminates everything that it touches. It unfits you for business; it degrades your manhood, undermines your vigor and lays waste your energies; it saps your vitality and looses for you the respect and confidence of your neighbors and friends; it breaks your mother's heart and blots out your attachments for home; it ruins your hopes and prospects for a bright and happy life; it hastens your father to a sad and immature grave; it brings tears down the cheeks of mothers and floods their hearts with misery and woe. Young man, you should not ask me to aid such an infamous cause; I cannot do it. I have some respect for my country's honor. Dearth and desolation are found in the wake of whiskey's course. It covers the land with misery and crime. It will curse your existence here on earth and finally land you in Hell. Young man, I cannot do it."

And, Mr. Booth here, who was with you coming down the streets, has stopped to wait for you. You go on to him, thinking about the request of the young man. It strikes you that it would be a good idea for him to go back and talk to that fellow. He is about to do that which will take him on the road to ruin and make him a curse to the country that he calls his home and a disgrace and a dishonor to the State that we all love. I wish that you would go and talk to him. Mr. Booth goes. He is actuated by the same feelings that actuated you. He enters into a conversation with the boy. He says that it will never do to drink; that it has slain too many reputations; that it has brought shame and despair and misery and want to too many homes; that it has been the father of too many crimes; that it does not stop at the havoc and ruin of the poor, but, like a vile and slimy serpent, it crawls across the threshold of our fairest homes and leaves its desolation and ruin there. It creeps into our Courts and defiles the streams of justice; it invites famine and courts disaster. It won't do to drink, young man. and about that time, Mr. Layson, you have gone

back to where your neighbor has been talking to the young man. You hear him say that it will never do to drink, and to emphasize what you have said before you again repeat, that is right young man, it will never do to drink. Time passes on; you are detained here in Court. You have been chosen to serve on this jury; you are here performing the obligations of citizenship. And after this trial is over; after these long days of waiting and suspense are at an end, with a consciousness of duty well performed; with the thought in your mind that this days' work, whatever your neighbors may temporarily think about it, will stand the test of time and vindicate your actions, and with the thought in your breast that if you have erred at all, it has been on the side of mercy and humanity, you go forth from this jury box and again be given your liberty and have the privilege to mix and mingle with your fellow-men without restraint and take your place again in the active battles of life, assuming its cares and sharing its burdens.

Suppose, as you are leaving this town, you come across this young man on the street and he again asks you for more whiskey or the money with which to purchase it. You are wanting to get to your homes. You do not tarry long with him; you have given him advice before, but you feel like you owe it to your country to again advise him. You again ask Mr. Booth to advise with him, as he is better acquainted with him than you. And you say to Mr. Booth: "I wish you would go and talk to that young man again; he is yet wanting whiskey." And you go and talk to him, Mr. Booth, and the young man says that is all right. "Then I will not drink if it is going to ruin me; I will let it alone." You gentlemen pass on to your homes. You think no more about the young man. Your mind and time are occupied with other matters. Weeks pass and suddenly, Mr. Layson, the Sheriff of your county comes with a warrant for your arrest. Maybe you say you will give yourself up as did Jim Howard. May be you say that the Courts and politics and money and prejudice and everything else is against you and that you will stand no show to get a fair trial, and that you decide not to go. The Sheriff arrests you on a warrant charging you with furnishing money to the young man, and lodges you in jail. You are carried before the Courts for trial. You find that the sentiments of the people are greatly aroused because of your alleged offense. They hate liquor in all its forms, and try to prevent it from contaminating the lives of the youths of the country. It is a fact that the young man got drunk soon after you came in contact with him. They charge you with furnishing him the money with which to get drunk. You were seen talking with him a while before he did get drunk.

The country says that any man who will strike a fatal blow at the very foundation of society and our homes by giving our youths whiskey

shall be severely dealt with. The newspapers of the State jump on you as soon as you are arrested. The politicians of the country, seeing an opportunity to ride into office on the indignation of the people by denouncing you, have been proclaiming your infamy from every cross-roads in the land. Your case is called for trial. You are a liquor man. You find that you are to be tried exclusively by Prohibitionists. The Judge is a strong Prohibitionist. The prosecuting attorney and officers of the Court are opposed to your liquor views, and the whole country has been taught to hate you, not because of what you have committed, but because of what you are alleged to have committed. Your trial begins. The prosecution puts the young man on the witness stand. He testifies that you had a private talk with him as you came here to Georgetown, and that while you did not exactly loan him the money with which to get the whiskey, that you left the saloon door open and told him to help himself, and that he did enter the saloon, at your instance, and get drunk. This closes the case against you. It is your time now to be heard. You put Mr. Booth on the stand and he testifies that as you and he came to town to serve as jurors in this case that you did have a talk with this young man on the streets of Georgetown, and that after you had a talk with him that you did come to him and ask him to also have a talk with the young man.

Mr. Booth testifies that he did go, in pursuance to your advice, and have a talk with the young man, and that he advised him not to drink whiskey. He testified further that while he was talking with him that you, Mr. Layson, did come up and enter into a conversation between the young man and him, and that you did say to the young man that it will never do to drink. This is the testimony of Mr. Booth. He testified further that after your services as jurors were over, in this case, that both of you started to your homes and that you both again came in contact with this same young man. Mr. Booth testified that you came to him again and asked him to go and talk to this young man and advise him not to drink, and he testifies further that the young man promised him that he would not drink.

You go on the stand, Mr. Layson, in your own behalf, and you testify to substantially what Mr. Booth testified to; you say that the young man did not want to borrow from you some money with which to buy whiskey and that you did not loan it to him, nor did you tell him to go into the saloon and get it. You tell the jury, under your oath, that you did call Mr. Booth to come and to talk to the young man and advise him not to drink. You say to this jury that you felt that you were doing your Christian duty and your duty as a citizen. You tell the jury that you both passed on and left the young man and came on to this Court and were detained here as a juror to try this case and that when the trial was over and you were discharged from

jury service that you again advised him not to drink. You testify further that you again called on Mr. Booth to talk to this young man and advise him to abstain from the use of all intoxicants. You say further that it is true that you are a farmer and that you raise corn and rye to sell and you testify that it is further true that the more whiskey that is consumed the higher will be the price of your corn and rye, but that you were advising the young man in good faith not to drink. You testify further that you are a citizen of this county, and that you wanted it to be pure in morals, true in religion, loftier in its ideals or right and wrong. You testified that you would not, under any state of case, attempt to undermine the foundation stones of society and of your country for the paltry sum of a few dollars and cents, and you would not, Mr. Layson. This closes the case for the defense.

The attorneys for the prosecution address the jury against you. They allege that if you did advise the young man not to drink or go into saloons that you did not mean it; that you had corn and rye; that the more whiskey is consumed, the greater will be the price of your corn and rye, and that is the thing in which you are interested. The testimony of the attorneys, Mr. Layson, is the only thing against you, and when the speeches are all over the jury retires to the jury room here. They are not in there long enough to read the indictment until a tap is heard on the door. They enter and a verdict comes: "We, the jury, find the defendant guilty and fix his punishment at hard labor for a period of his natural life, in the penitentiary in this State."

My God! Mr. Layson. What emotions would fill your breast when you heard the verdict read. Read by your fellow-men; read by twelve citizens of your own State, and that, too, Mr. Layson, when you knew that you were innocent of the charge; when you know that you did all that was required of you as a citizen to your country, and gave the young man the very best advice known to your head or heart. You did more; you called your neighbor and had him advise him. You not only did what the morals of your country require, but you went further; you did more than that. You fulfilled the Biblical injunction, that if your brother errs, or is about to err, to put him in the right, and for that fatherly and country-saving advice you have been branded as an enemy to your country and as a foe to mankind; as a dangerous element to our citizenship. What would you think of a State that would so mistreat you? When perils come to our country, when our flag is endangered, the country calls upon you to defend it; neither your property nor your life is spared in its defense and when perils come to you, Mr. Layson, as in this case I have supposed, instead of the State and country using its strong arm to defend you, it uses all of its resources to oppress you. What would you think of it, Mr. Layson? The country that will not defend its defenders is a disgrace.



to the world, and its flag a filthy rag that befouls the air through which it waves.

I ask you, Mr. Layson, how does your conduct differ in the case I have supposed from mine in dealing with Henry Youtsey? I saw the young man in my office. I do not know how came him there. He was in the reception room without authority or permission from any one, so far as I know, and as far as has been proven in this case. If he would go to one place without permission, he would go to another without permission. He did get there without permission. That testimony is not contradicted by any testimony on the part of the prosecution. I saw him in the office with a gun. I went into my office. I went there; I had a right to go; went where my duty called me. I found him there. He had a gun. I asked him what he was doing with it. What should I have asked him? And when he did not give me the satisfaction I demanded, I went to get some one to talk to him who was better acquainted with him than I was. I advised him for the best, as you did the young man, Mr. Layson, who wanted the money to buy the whiskey. I gave him the best advice I had. So did you in the case I have supposed. I could have talked to him myself and have let him have gone his way. So could you with the young man who wanted the whiskey. You thought it best to have some one else to talk to him, and you did have it done. If you had advised the young man to have gotten drunk and loaned him the money for that purpose, the prosecuting officer would have said: "Of course he is guilty. He says he loaned him the money for that purpose." And when you show that you not only did not loan him the money, but advised him not to drink, and prove it by Mr. Booth, then they say you are playing a double part; that you did not mean it. It is be damned if you do and be damned if you don't. And with me it is be damned if you do and be damned if you don't.

Gentlemen, I am a citizen of this State, and I should be treated as such, whether I am a Republican or a Democrat. Whether I was born in the hills or in the plains, I am entitled to justice at the hands of my fellow citizens. I am a citizen of this country, and citizenship not only means that a man should be obedient to the law and have due regard for the rights of others, promote the welfare and well-being of our neighbors and in times of peril give our property and our lives for our country. Citizenship means more than that, gentlemen; it means that this country shall protect us in all the rights of citizenship, which the constitution of this country guarantees to us. It would be a poor country, indeed, that has the right to demand of its citizens their property and their lives in times of its own perils and when perils come to one of its own citizens, to turn its back upon him, and even lends a hand in his oppression. I am entitled to a fair trial, gentlemen; I am entitled to justice at your hands.

If testimony can be believed; if reason can be relied upon, I was not in a conspiracy with Henry E. Youtsey. Then, gentlemen, I am not guilty of that with which I am charged.\* I did not know Holland Whittaker; I did not procure him to murder Mr. Goebel. I did not know Dick Combs; I could not have procured him to have murdered Mr. Goebel. I did not know Jim Howard; I had no communication with him; I, therefore, could not have procured him to have killed Mr. Goebel. The unknown man is no more. As an actual quantity, he is no more. The prosecution, by their present theory, has eliminated the unknown man from this case. I, therefore, did not conspire with, or procure, any unknown man to have killed Mr. Goebel.

Then, men, how can I be guilty under this indictment? How can you find me guilty? You cannot; you will not. With all the testimony of all the star witnesses swearing for money and immunity, there is no testimony against me in this case except circumstantial testimony, that character of testimony that always, or often, lies, and is always unreliable. Col. Campbell said in his opening argument that so far as he is individually concerned, he would as soon convict me on circumstantial testimony as on any other class of testimony. Why, the whole world knows that circumstantial testimony is the most dangerous and the most unreliable sort of testimony that can be introduced in a Court of justice.

Let me illustrate the uncertainty and unreliability of circumstantial testimony by a story I read once. The story is like this: A few years ago, up in a Vermont town, in Crittenden county, there happened a very strange case. There lived in the suburbs of the quiet little village a rich old bachelor. He had devoted his life to the making of money and had retired from an active business life to enjoy it in his own way. It was in everybody's mouth that he kept close about him, in his costly mansion, a vast deal of money. He kept within his palatial dwelling but one negro servant to attend his wants and needs. There they lived in solitude. It was after midnight on one cold and bleak November day that the neighbors were aroused by the firing of pistols in the costly mansion. Fearing foul play, they rushed to the scene of the tragedy, for such it was. They found every window in the house locked and the doors barred and bolted. They heard groans on the inside of the house. They knew that the trouble was within. They bursted the front door down and entered. They swept across the spacious hallway and rushed up on the second floor of the building to find, in the room always occupied by the old man, a sad scene. The white hairs of the old man weltering his own blood. His brains bespattered the floor, the walls and windows of his own room. A bullet had entered his forehead; he was dead and his pistol lay grasped in his right hand. It had been discharged in the affray; it was pointed towards the door of his own

room. Nearer the door of his room lay his colored servant, shot in face and head. It was found that the bullet hole in the head of the colored servant was exactly of the same caliber as that of the pistol fired by the master. This helped to confirm the story, if it needed confirmation, that the servant was shot by his master while attempting to rob him. The negro was not dead, but paralyzed by the blow. He was moaning and muttering inaudible sounds. His landlord's watch and jewelry lay near his hands, and a pistol that had been discharged twice lay near him to help tell the story of the old man's murder. It was several days before the negro servant was able to talk. During that time, public opinion had been formed. The negro's insensibility prevented him from being robbed without judge or jury. Everybody said that he had tried to rob his master and in the attempt had killed him. There was no other explanation of it. They were the only two in the house. The doors and windows were all barred and bolted when the neighbors gathered upon the scene. There the old man lay; the negro was shot in the room of the old man and had the jewelry of his master near his hands. As soon as the negro gained consciousness, he vainly pleaded his innocence. He said that he was not guilty. His protestations could not save him. He was indicted and was given a speedy hearing. The trial proceeded. He was convicted. He was convicted before the trial began. Public sentiment had convicted him. The jury brought in a verdict of guilty and said that his life should pay the penalty for his crime. Gentlemen, what if you had been on the jury, what would you have done? What would your verdict have been? The poor, helpless prisoner pleaded his innocence.

What if I had been found shot and Geebel dead at the Capitol Hotel, in Frankfort, under these circumstances, and that I had said that I went there to see him on some business, what would your verdict have been? What would it have been in the case of the colored servant? The poor prisoner pleaded his innocence. That was the only thing he had on his side. He was not guilty, gentlemen. But his innocence did not save him. He was hanged.

And, by and by, the great searchlight, "Time," was turned in upon events. By and by the great unraveler of all mysteries began to solve this problem. The negro was dead; he had been judicially murdered; the jury had taken from him that which they could not give back to him—his life. It was beyond human power to restore, when the world knew that he was not guilty. On his deathbed a noted crook confessed to the murder of the old man, and told the circumstances surrounding it. A few months before the occurrence, he had come to the quiet little village, as a day laborer. He had learned from the gossip of the towns people the reputed wealth of the old bachelor. He determined to have his means. On the evening of the

murder, a dark and cloudy day in November, he had slipped by stealth up the quiet lawn, under the somber timber and into the wide hallway and into one of its dark and neglected alcoves. There he remained until late evening came, dragging behind it the drapery of night. He was unobserved, as the house was a large and spacious one, with few occupants—only two. The doors and windows of the old home had been barred and bolted by the faithful old colored servant upon the approach of night, as had long been his custom. He went to his room thinking of no harm to his old master, whom he had so faithfully served, and for whom he had at all times been ready to give up his life. When the dead hours of night drug their heavy forms along, when innocent humanity was locked in the arms of refreshing sleep, the burglar stole from his place of secret hiding, wound his course up the still stairway to the room of his victim. He crept into apartments owned by another, in search of gold, and found the white head of an old man lying upon a pillow of easy repose. He began to search for his jewelry and gold. The wakeful hours of old age was soon doisturbed. The burglar demanded the toil of his years, or his life. The encounter soon began. Pistols were fired in quick succession. The faithful old colored man rushed to the scene of the difficulty, just in time to receive the shot of his master and fell, groaning, to the floor. The burglar dropped the jewelry he had gotten, fired a parting shot, dropped his pistol, and fled. The old man fell lifeless to the floor. The burglar returned to his secret hiding place unharmed. The neighbors battered down the front door and swept up to the room to the tragedy. In the hurry and excitement of the hour, the real murderer passed out unnoticed and went his way, uncaught, unsuspected and unharmed.

Gentlemen, the history of this world is full of such examples. And so our law-makers, in their wisdom, have said that before you can take a man's life or his liberty for life on circumstantial proof, the evidence introduced by the Commonwealth must be such that the crime cannot be accounted for on any other hypothesis than the guilt of the accused.

Dreyfus was sent to Devil's Island on circumstantial testimony and perjured proof. The judiciary of France is disgraced forever on account of it. On circumstantial testimony, Samuel Arnold, an innocent man, was sent to Dry Tortugas for life for alleged complicity in the assassination of Abraham Lincoln. Dr. Mudd met a similar fate. On circumstantial testimony and perjured proof, Mrs. Suratt, an innocent woman, was hung for alleged complicity in the assassination of Abraham Lincoln. America will never outlive it. Beware, men, of circumstantial testimony. It is untrustworthy; it misleads; it lies; it deceives.

### MILITARY CONSPIRACY.

If I did not procure some one of the five named principals to murder Senator Goebel, I could not be guilty, although there was a great deal of hot blood at Frankfort and elsewhere over the State during the contest, and, although the mountain crowd came to Frankfort, and although the militia was called out. But since there has been so much said on these subjects, even during this trial, a discussion of them may not be amiss, and we will now come to a discussion of the military. I have tried, gentlemen, to take up the various claims of the prosecution and group the testimony bearing upon their claim that we might more clearly understand what foundation there is for such a claim. You know the prosecution has always said that the bringing of the mountain men to Frankfort was one part of the conspiracy to kill Senator Goebel. It is the claim of the Commonwealth that the militia was a part of the alleged conspiracy to kill Senator Goebel; that the part it was to play was to protect the men after they had done the work of killing Senator Goebel; that it was to protect the criminal, or criminals, after the shot was fired from arrest or from violence; that that was the part to be played by the military; and that it played that part. This is the claim of the prosecution. All this evidence introduced by the Commonwealth to show that no one was allowed to pass into the Executive building after the shooting; all this testimony about the placing of guards at the gates of the Capitol square and doors of the Capital building; and all this testimony about requiring passes before any one could be admitted to the grounds, was for the purpose of showing that any one not friendly to the act of assassination, or those who indorsed that act, was not permitted to pass into the grounds. And all this evidence about keeping men at the arsenal for months before the killing of Senator Goebel, is for the purpose of showing that Taylor and Collier and others had in view the killing of Senator Goebel, and that they wanted the military to be ready to run down to the State House and protect those who were in the killing after it was done.

I do not think that I have misstated the claims of the prosecution. Those engaged in the prosecution are in that claim like they are in others that they have made, they are either right or wrong. And if the militia was a part of any plan to kill Senator Goebel, the testimony ought to disclose the fact, and so far as I am individually concerned, gentlemen, I have never fully understood the force of the argument on the part of the prosecution that I should be convicted for the murder of Senator Goebel, if the military were used in connection with Senator Goebel's taking off. I was not a military officer. I didn't order out the military after Senator Goebel was killed; I had no connection with the military in any way; I have had no connection

with Gen. Collier, Col. Dickson, Col. Mengel or Col. Gray, who did have charge of the military, and if, as a matter of fact, the military were used, as is alleged by the prosecution, I cannot understand why that I should be held responsible for its use.

But, gentlemen, was the military so used? What does the evidence disclose? There are a number of witnesses both on th part of the defense and the prosecution who testify that at least a part of the military company was kept at the arsenal from the November election of '99 until Senator Goebel was killed; and there are a number of witnesses who testify that the militia came to the State House from within eight to fifteen minutes after Senator Goebel had been shot, while the witnesses for the defense say that it was from twenty to thirty-five minutes after Senator Goebel had been shot before the arrival of the military on the State House Square. And there are a number of witnesses who give various versions as to why the militia was called out at all, and the condition of affairs that existed at the time that they were called out. It is claimed by the prosecution that the militia was called out to protect the guilty from arrest. It is claimed by the defense that the militia was called to protect the buildings and the occupants from mob violence. Let us look into those claims, gentlemen.

You remember that McKenzie Todd was formerly one of the witnesses for the prosecution; he was in the reception room at the time the shot was fired. He told you that there was great excitement after the fatal shot had been fired; and that he, for one, was so afraid of mob violence that he actually left his post of duty and sought safety in flight. He told you that he left the Executive building and went to the home of Capt. John Davis.

George L. Barnes was another witness in this case who was in the Executive building at the time the shot was fired. He tells you that he went immediately to the door of the Executive building and that he saw Mr. Bill Jett, John E. Miles and others on the State House yard and heard them saythat the thing to do was to blow up the Executive building and murder all of its occupants. He told you, too, that there was a great deal of excitement and a great many threats made against the occupants of the building.

R. N. Miller was an occupant of the reception room at the time the shot was fired. He said that the clerks were all excited. "Everybody was asking what was the matter. The people began to gather out in the streets; word was strated, I don't know how, that they were going to mob the inmates."

Capt. Steve Sharpe, that gallant ex-Confederate, told you that the street in front of the Capital building was filled with a threatening and excited mob; that he went to the Executive building and tendered his services to Gov. Taylor for the purpose of preventing mob violence

to the occupants of the building if possible; and that he, at the instance of Gov. Taylor, gathered together as many men and guns as he could find for that purpose, and did station them in the Executive building in order to prevent the threatened and threatening violence.

Capt. Della Walcott told you of threats to hang Taylor and all the Republican officials. Chief Justice Jas. H. Hazlerigg and others told you of an excited crowd being in the streets. George Barnes told you that some of them had guns.

#### **DANGER OF MOB VIOLENCE.**

If there had been no testimony to the effect that there was great excitement and danger of mob violence you gentlemen would know that from your experience. The wildest excitement prevailed and the danger of mob violence was imminent. It is a matter of current history with which all are familiar that Senator Blackburn and others, three days after Goebel had been shot, in a card to the Democrats of the State, pleaded with them not to resort to mob violence.

Now, gentlemen, from the evidence in this case, can you decide that the militia was a part of any conspiracy to murder Senator Goebel? The only evidence introduced on the part of the prosecution was to the effect that soldiers were kept at the arsenal; that they were there for months before the assassination of Senator Goebel, and that they were on the State House Square after the killing within eight to fifteen minutes, while the defense has proved to you beyond all question that the "all right" telegrams had no connection with the killing of Senator Goebel. Gen. Collier and Col. Grey and Col. Mengel all testify that the "all right" telegrams were arranged between them on the 11th of January for Col. Grey and Col. Mengel, of the First Kentucky Regiment, to bring their regiment to Frankfort in the event of any disturbance of the public peace upon the receipt of the telegram "all right." These three witnesses are not contradicted by a single witness on that point.

Mr. Todd, Mr. Miller, Mr. Barnes and Mr. Walcutt and others tell you that there was great excitement at the time Senator Goebel was killed and that threats were made to mob the occupants of the Executive building and to blow up same. Miller and Shepherd told you that Capt. Davis took an order from Gov. Taylor to Gen. Collier to call out the militia for the purpose, as the order expressed it, to prevent the destruction of property and the loss of human life. Collier tells you that he received that order. He tells you that he sent John Perkins up to the arsenal to tell Capt. Walcutt to bring a portion of his soldiers to the State House and to leave a part of them there to protect the arsenal.

But why leave them there to protect the arsenal, gentlemen? It is the claim of the prosecution that the company was kept at the arsenal to be in readiness to protect those who were in the murder

of Senator Goebel. It has been the claim of the defense that they were kept there to protect the property of the arsenal and for the purpose of suppressing any disturbance that might occur in Frankfort, the storm center of political excitement at that time. When Senator Goebel was killed, part of the men was kept at the arsenal for the purpose of protecting the property and another part was taken to the State House to quell any riot that might be organized.

If the militia was kept at the arsenal for the purpose of assisting in the assassination of Senator Goebel, as is claimed by the prosecution, why were soldiers kept on guard duty at night at the arsenal for months before Senator Goebel was killed? Why keep soldiers on guard at night at all? Nobody will contend that soldiers could be used in the night time for the purpose of protecting the assassins of Senator Goebel from arrest. Then why was there walking sentinels guarding the arsenal at night time? There could have been but one object, and that to protect the property of the arsenal from seizure as is claimed by the defense. There can be no doubt but that the arsenal was guarded in the night time by three reliefs of soldiers. Julian Kersey, a Commonwealth's witness told you that. Then the claim on the part of the defense that the soldiers were kept at the arsenal for the purpose of protecting the property is proven by witnesses for the Commonwealth. Now what about the other part of the claim of the defense that they were kept there to suppress any disorder that might arise and that they were called out immediately after the shooting of Senator Goebel for the purpose of protecting the occupants and the attachees of the Capital buildings from mob violence. Let us see. Sam Shepherd told you that immediately after the shot was fired, he advised Taylor to call out the troops. Taylor, in his deposition told you that he issued such orders. R. N. Miller told you that Capt. John Davis carried those orders to Gen. Collier. Gen. Collier told you that he received those orders and that he sent John Perkins to the arsenal with orders to bring a part of the military company stationed there to the State House grounds.

John Perkins tells you that he carried those orders from Gen. Collier to Capt. Walcutt. Collier and John Perkins both tell you that Senator Goebel had been carried out of the State House grounds before he left the State House to deliver the message. Capt. Walcutt tells you that he received the message at the hands of John Perkins, the janitor, and that they took a number of soldiers that had been ordered out to the State House grounds and stationed them at the various gates and at the entrance to the various public buildings occupied by the Republican officials.

There is a difference in time as to when the company at the arsenal reached the State House grounds. The prosecution attempted to make it appear that the company at the arsenal had received its or-



orders to be in readiness to march to the State House grounds and protect those, who they claim, were concerned in the killing of Goebel, before the shot had ever been fired; but there is no evidence upon that point, gentlemen, and if the prosecution is right in their contention that the military company at the arsenal knew that Senator Goebel was going to be killed before he was killed, and was there in readiness to march to the State House grounds for the purpose of protecting those committing the murder, then those men in that military company, too, gentlemen, are guilty of the awful crime of murder; and I ask you, Mr. Franklin, why it is that these thirty men comprising the military company who were stationed at the arsenal at that time have not been indicted for complicity in the murder?

They live in Franklin county, the county of your home. They are within a few hundred yards of your residence, and if they had knowledge that Senator Goebel was going to be killed, and did, as a matter of fact, go to protect those who did the killing, they are as guilty in the eyes of the law as the man firing the shot, and why have they not been apprehended and convicted?

That they have not is proof positive to my mind that so far as the militia at the arsenal is concerned, Mr. Franklin and these gentlemen, do not believe that they had ought to do with the killing of Senator Goebel. And if the prosecution is right that the militia was to be used for the purpose of protecting those who were guilty of the murder of Senator Goebel, from violence or arrest, then those who so used the militia should be held accountable for their conduct. If one of the vast throng of men who are here in the Court-house, should step down on the street of Georgetown and kill a man, it would not be fair or just, gentlemen, for you or I to be taken up and tried for the offense, and let the man who did the killing go free.

#### WHY NOT INDICT OTHERS?

If the militia was used for the purpose of protecting the one who killed Senator Goebel from arrest or from violence, then General Dan Collier, Col. J. K. Dixon, Col. C. C. Mengel and Col. Gray used the militia for that purpose. Collier was the Adjutant General of the State. He was in supreme command of all the forces of the State, subject to the orders of the Chief Executive. Collier ordered the militia from the arsenal to the State House after the killing of Senator Goebel, and got the troops on the ground, according to these gentlemen, from with ten to fifteen minutes after the shooting. Collier sent out telegrams all over the State to the various military companies to come to Frankfort at once. In fact, the whole of the militia of the State was called out. He had arranged with Col. Gray and Col. Mengel of Louisville for them to bring all their forces, the troops, ammunition, arms and men upon the receipt of the telegram "All right." Col. Mengel tells you that Col. Gray and Gen. Collier met him

in Louisville and arranged with him what "all right" meant and what he should do upon the receipt of such telegram. Then, of course, gentlemen, Col. Mengel and Col. Gray were also in the conspiracy to kill Senator Goebel, if the militia formed a part of that conspiracy, as these gentlemen claim. There is no escape from that conclusion.

I have had nothing to do with the militia. I was not a military officer. And there is no proof in this record that I ever had aught to do with the militia, except the bringing of the mountain men to Frankfort and a part of them were men who belonged to the military company, but this was five days before Senator Goebel was killed, and the great mass of these men had gone back to their homes. I had nothing to do with the men at the arsenal. I had nothing to do with the ordering out of the troops. I took no part in the assembling of the men after the killing of Senator Goebel to the State House Square. Then if that was a part of the conspiracy to kill Senator Goebel, it was a part of the conspiracy with which I had nothing to do, and it was a part of the conspiracy, if a conspiracy it was, with which Gen. Collier, J. K. Dixon, Col. C. C. Mengel and Col. Gray did have to do. Not only those men, gentlemen, but every man who brought his military company to Frankfort to be used for that purpose.

Then if the militia was a part of the conspiracy to kill Senator Goebel, then I ask you why, Mr. Franklin, you have not indicted those who had charge of the militia? Also the men at the arsenal? If the use of the militia was a part of the plan by which the murder of Senator Goebel was to be accomplished, then I ask you why have you not indicted the militia? Why have you not indicted General Collier and Col. Gray and Col. Dixon and Col. Mengel? I ask you why, Mr. Franklin. I want you not only to tell this jury why, but I ask you to tell this country why. Tell us why, Mr. Franklin, tell us why. I had nothing to do with the militia. And if the use of the militia was a part of a plan to accomplish the murder of Senator Goebel, then I had nothing to do with that part. Then why did you indict me and let Gen. Collier and these other gentlemen escape? If these men were in a conspiracy to kill Senator Goebel then they ought to be punished. Col. Dixon has walked the streets of Frankfort much from the day of the killing of Senator Goebel until this good day, living as your neighbor, sir, in your very town; he is living there now. As an honest man and an honest officer, why have you not apprehended and punished him, if he is guilty of the murder of Senator Goebel? Gen. Collier has told you time and time again that if you wanted him, he would come to you, and save you any trouble in sending after him. If the militia were a part of a conspiracy to kill Senator Goebel, why have you not indicted him? Why have you not indicted Col. Gray and Col. Mengel? Will any one contend, seriously, that the soldiers were kept in the arsenal at Frankfort before the November election for

the purpose of killing Mr. Goebel before it was known who was elected or who defeated; or kept there for the purpose of protecting those to be engaged in killing off enough Republicans in the General Assembly to give the Democrats a majority, when it was not known that they would have a majority?

By your own conduct, there are only one of the two conclusions that can be drawn. The militia was either not a part of the conspiracy, or you, Mr. Franklin, have sat idly and unconcernedly by and witnessed vile conspirators murder one of your party associates, stalk over this land undisturbed by those whose sworn duty it is to prosecute them.

It is no answer to say that you will do it in the future. You know that the law in this State is that conspirators to commit murder can be indicted in any county in the State in which any part of the plan to murder was consummated. If the bringing of the mountain men to Frankfort was a part of the conspiracy to murder Senator Goebel, then the men who came to Frankfort could have been indicted in any county through which they came. They could have been indicted in Fayette county, or in Madison county, or in the county of Clark, or in any of those counties. If the militia were a part of the conspiracy then Gray and Mengel could have been indicted in Louisville. Or they could have been indicted in Franklin county and you could have sent the cases to Bourbon and Woodford and Owen and the the adjoining judicial districts for trial. You have had terms of court upon terms of court in Franklin and Scott counties, in which to have tried them. Then you have confessed by your own conduct that the militia formed no part of the conspiracy to kill Senator Goebel; and if it did, gentlemen, I had nothing to do with the militia and should not be held responsible for the acts of some one else.

You have not indicted the military officers and the conclusion must, therefore, be reached that the militia was not used by anybody for the purpose of protecting the one, or ones, responsible for the killing of Senator Goebel.

#### PROPER USES OF MILITARY.

Why is there such a thing as the militia of the State? What should it be used for? You read of the militia being called out to protect human life here, and human life there; called out to prevent the destruction of property; called out to suppress riot and prevent bloodshed, that is what the militia is for gentlemen. That is the reason that you pay taxes to pay the salary of these gentlemen, who have charge of the militia of the State, its equipments and expenses.

The defense claims that the State had been in a fever of excitement for many months. The defense claims that in every city, in every town, in every community and at every cross-roads of the Commonwealth that the people were stirred to their very depths. The

claim of the defense is that even before the killing of Senator Goebel that there had not existed such bitter feeling between neighbor and neighbor and between friend and friend since the late war as existed in this State prior to and following the killing of Senator Goebel. Our claim is, gentlemen, that the intensity of the feeling was such that it divided homes of this country; that father and son would not sleep under the same roof and that it divided and separated congregation and pastor. Partners in business dissolved partnership. That is our claim. We say that neighbor was arrayed against neighbor; and that wherever men met whose political opinions were not the same that there was always danger of an outburst. That the whole of Kentucky was like a powder house, ready to explode at any time and upon the least provocation. Our claim is that Frankfort was the storm center of all the angry passions of the State; that there the excitement was the greatest and the antagonism the sharpest; that there bitter feeling was the highest; that there were two forces, one on the one side threatening to take forcible possession of the offices, and one on the other side saying that they should not do that. Everybody knows how near civil strife in the State, civil war in the State, was averted.

Our contention is, gentlemen, that it was the duty of those who had charge of the militia of the State, to keep it in readiness at all times, to quell any disturbance that might arise. It was as much the duty of the militia to quell a disturbance that might have arisen between the two political forces at Frankfort, as it was to have stopped any other disturbance that might have arisen anywhere else in the State.

And if Taylor and Collier and others called out the militia for the purpose of keeping down mob violence as they claim, it was certainly the duty of the men who had been placed to guard the gates, the doors and the entrances, to not let any one pass through the lines without a permit. You go to any camp of soldiers and you will find the whole guarded by walking sentinels, and all who enter must know the countersign, or have a written permit from the commanding officer. Any other arrangement would not be military. Go to West Point, go to Fort Thomas, go to the encampment of the State Guards of this State, and you will find that they all do it. In every war that this country has ever had, there was never a regiment of men, there was never a soldier camp that was not guarded in this way from the enemy, if it was well managed from a military point of view.

That was what was done at Frankfort. The Commonwealth claims that the square was barricaded for the purpose of protecting the assassin from arrest, while the defense claims that it was for the purpose of preventing mob violence. So far as I am individually concerned, gentlemen, I do not know why it was done. I was not a

party to it, I had nothing to do with it; I am not responsible for it. But if the evidence and reason can be relied upon, the militia was called out to protect the occupants of the executive building from mob violence. Taylor did not do what I would have done. After the militia had been thrown around the State House yard I would not have let anybody, either in or out, until I had sent for some intimate friend of Senator Goebel and discussed with him the best means of bringing to justice the guilty; and I would have let as many city officials as there were in Frankfort, have had admission to those grounds, and would have rendered them every service within my power to have determined who the guilty were and helped to bring about their arrest.

#### SOUGHT TO FIND ASSASSIN.

After I got back to Frankfort from Louisville, I did what I could to investigate it. I sent J. B. Mathews, at my own expense, to Louisville to see Miss Weist, to see if she knew anything about the killing. Youtsey's conduct aroused my suspicion. I knew that her office joined his at the time of the tragedy. I learned that she was in her office. I wanted to see what she knew. I told Grant Roberts and the two Sweeney boys, who worked in the same office with Youtsey, to find out all they could about his conduct and report to me. Would I have done that if I had been implicated with Henry Youtsey in the murder of Mr. Goebel? I told McKenzie Todd that I wanted a full investigation of the case. This was before I was arrested, and when suspicion rested upon my office. I told him the same after I was arrested. I told Mathews I wanted a full and complete investigation of the murder of Senator Goebel. I employed J. B. Mathews to run the assassin down. He tried it. He wanted assistance. He told George Hemphill and myself in my office before my arrest that Detective T. L. Griffin, of Somerset, was a trustworthy and reliable detective; that he would let the facts remain where he found them; that he would expose the guilty, and in so doing would shield and save the innocent. I agreed for Griffin to be called in. He was called in and put to work on the case. This was before my arrest; but after it was being claimed that the fatal shot came from my office. Griffin was told that I would try to get the Louisville defense committee, through my attorneys, to set apart a portion of the defense fund with which to pay for detective service. This was not accomplished, and Griffin was told to go ahead with his investigations and unearth the guilty, if possible, and for his services rely, upon the reward offered by the Commonwealth for the conviction of the guilty. Griffin promised to do this. I had no money of my own with which to employ him. I did what I could to expose the guilty. I advised with Judge Yost and Gov. Bradley about going to the prosecution and telling them what I had found out and offer my assistance, but I was advised that I would be misunderstood.

Taylor did not do what you would have done. He might have acted differently in a cooler moment, and he might not. I do not know anything about that, but if he did wrong, in that, or any other particular, am I to suffer for the wrongs of others? Am I to be held responsible for some other man's ill judgment? Keep this one point in view, gentlemen: remember that I was not a military officer, and that there is no proof whatever in this whole record that tends to show that I had aught to do with the militia. I brought some of the companies of citizens from Eastern Kentucky, five days before the killing of Senator Goebel, but those had gone home and I did not have the remotest thing to do with surrounding the State House Square with the militia after the killing of Senator Goebel, and, herefore, gentlemen, could not have had the praise, if it was right; nor the blame, if it was wrong.

But there is one thing, gentlemen, that must convince all sober-minded men that the surrounding of the State House with militia, after the shooting of Senator Goebel; the telegrams "all right," and the calling out of the militia after the killing of Senator Goebel, was no part of a conspiracy to murder him. You remember that Col. Gray and Gen. Collier met and had a conference about the telegrams "all right;" at any rate, Col. Gray understood what to do when he received the telegrams "all right," and that was to take his men to Frankfort at once with all equipments. He did that.

Then, if the calling out of the militia, after the killing of Senator Goebel, was a part of the plan to kill Senator Goebel, then Col. Gray was into that and understood the plan and acted in concert with the other military officers in getting the militia to Frankfort, and in response to the telegram, "all right." Then Col. Gray must have been a party to that part of the conspiracy. Col. Gray was, and is, so far as I know, a Democrat. He was one of Mr. Goebel's supporters. Then, you are asking us to believe that one of his own political friends entered into a plot to bring about his death.

That, gentlemen, is not reasonable. The idea of any set of men taking a Goebel Democrat into a conspiracy to murder Goebel. This is proof positive, to my mind, gentlemen, that the militia formed no part of a plan to kill Senator Goebel. The fact that Col. Gray is a Goebel Democrat and the fact that Mr. Franklin has not indicted Collier and Dixon and Gray and Mengel and these other men who had charge of the militia is convincing evidence, to my mind, that Mr. Franklin does not believe that the use of the militia formed any part of a plan or plot to kill Senator Goebel, or he would have certainly indicted these men and have brought them to justice.

And for whatever purpose the militia may have been used, I had nothing to do with the militia. Will you convict me for the deeds of others? No; you will not. You surely cannot. I beseech you to never

let it be recorded in the pages of Kentucky history, a State whose record is already black enough with crime, that a jury of that State, in the morning of this new century, the best century in all this world's history, with all the achievements of the mighty past thrown at our feet, with all the deeds of noble manhood and splendid womanhood to light our path to duty—let it be said, gentlemen, that in response to the wild clamor for revenge on the part of interested detectives, known perjurers, and blatant partisans, you were induced to rob a young Kentuckian of his good name, put the stripes of a felon around his limbs and hurry him off to a living death for life. And all this, gentlemen, with the eyes of a civilized world looking on.

### TRIAL WILL LIVE IN HISTORY.

This trial, gentlemen, is not merely of to-day. It will live as long as our State's doings are read. This trial is not over when this jury is dismissed and you start for your homes. So far as my individual liberty is concerned, that will have been settled. But at its conclusion will begin the trial of you, gentlemen, and this court, before the great bar of public opinion. Yea, that trial has already begun. And ultimately, gentlemen, the integrity of the courts of our State and their reputation for fair dealing will be determined in accordance with the merits of the case. The public, yea posterity, may have its deflections here and there in arriving at just conclusions: prejudice may, for a while, blind the eyes of men: temporary interests may for a time warp their sensibilities and distort their judgment, but in the end their judgment will be clarified, and a just and impartial conclusion will be reached concerning the merits of this controversy.

If you do not know the right of it; if you are not able to see the right of it; if you cannot be satisfied beyond all doubt that I am guilty, it is your duty, under the law and under your oaths, to give me my liberty. You have sworn that you would do that. You cannot know that I am guilty, because I am not, and you cannot know it. And in this state of uncertainty, where everybody is wanting to know the truth and where nobody seems to know it, had you not rather be able to say in the future: "If I erred at all, it was upon the side of mercy and humanity." You would take pride in saying that all the days of your life. Your friends would take pride in saying it of you. They might be disappointed for the time. I know full well the prejudice that exists in this case. But that feeling is rapidly giving away and bye and bye those who have been most cruel and vindictive will be remembered by their neighbors as being men who will not do to trust to do the right thing, when pressure is brought to bear upon them. When human life and human liberty are at stake, men should be careful not to be influenced by any consideration other than the guilt or innocence of the accused, and they should know that he is guilty before they lay hands upon his liberty or his freedom.

Gov. Crittenden, in speaking of what care and caution jurors should use when human liberty and human life was at stake, and how sure they should be that the defendant was guilty before they bring in a verdict of guilty, addressed a jury thus: But upon the other hand, if you should feel that there ought to have been a verdict of guilty, your conscience will be easily satisfied. You will say: If I erred, it was upon the side of mercy, thank God; I incurred no hazard of condemning a man who might have been innocent. How different the memory from that which may come at any calm moment, by day or night, knocking at the door of your heart, and reminding you that in a case where you were doubtful, by your verdict, you sent an innocent man to disgrace and to death. Oh! gentlemen, pronounce no such verdict. I beseech you not to do it, except on the most clear and certain and solid grounds. If you err, for your own sake, as well as for that of the defendant, keep on the side of humanity and save him from such a dishonorable fate; preserve yourselves from so bitter a memory. It will not do, then, to plead to your consciences any subtle technicalities and nice logic; such cunning of the mind will never satisfy the heart of an honest man. The case must be one that speaks for itself; that requires no reasoning; that, without argument, appeals to the understanding and strikes conviction to the very heart. Unless it does that, you abuse yourselves, abuse your consciences, and irrevocably wrong your fellow-man by pronouncing him guilty. It is life, it is blood with which you have to deal, and beware that you peril not your peace.

These are the words of one of Kentucky's greatest Governors; one of Kentucky's greatest Democrats; one of Kentucky's greatest men. He says that the case must be one that speaks for itself. One that requires no reasonings and no argument, but strikes conviction to the very heart. He says that unless it does this that you abuse yourselves and your conscience and irrevocably wrong your fellow-man, by pronouncing a verdict of guilty. Oh, my God! Is this case such an one that strikes conviction into your heart without argument? He says that it is life, it is blood with which you have to deal, and beware that you imperil not your own peace.

This occasion will soon fly by; these prosecutions will soon come to an end. Whatever the verdict in this case, the affairs of this great world will still go on, and if the Democratic party in this State; if the prosecution in this case; if the brothers of Senator Goebel really want to try Gov. Taylor for alleged complicity in the murder of their brother, they will soon have that opportunity if you will do justice in this case. As soon as I am acquitted, as I deserve to be, Taylor will be surrendered for trial by the Indiana authorities. If you want to try him in these courts, instead of me, you have that opportunity. I think I know whereof I speak.



But, leaving out of consideration the question of policy and expediency, justice demands that I be given my liberty. I implore you, gentlemen, to do the right thing in this case. Your days on earth may not be many. I beg of you not to ruin both yours and mine. The Almighty seems to have been on the wake of those who have been doing wrong in these cases. At any rate, gentlemen, whatever may have been the cause of it, those who have been most vindictive have met with misfortune.

They ask you to rob me of the brightest jewel of my life—my good name, my honor, ah, even of my life itself. Your faces, gentlemen, tell me that you will never do it. It was not enough to take my office from me, break me up and reduce me to poverty and want. But they throw me in chains and brand me as a red-handed murderer for resisting, in a legitimate way, the taking of my office. They brand me as a felon for doing that which any honest man on earth would have done. They have not done right by me, gentlemen. It is wrong; it is cruel; it is barbarous; it is an awful crime against myself and a brutal and dangerous stab at our courts of justice and our country's honor.

#### A RETROSPECTIVE VIEW.

Let us now take up the claim on the part of the prosecution that the bringing of the mountain crowd to Frankfort constituted a part of the conspiracy to murder William Goebel.

In order for you, gentlemen, to understand fully my motives in bringing that crowd to Frankfort, you must put yourselves in my place. The best rule I have ever discovered, gentlemen, to know whether or not I have been wronged or insulted or mistreated by anybody, if I am in doubt about it, is to put myself in his place and surround myself by that which surrounds him, and see what I would have done under like circumstances. And that is the intention of the law, gentlemen, in the trial of those accused. It is the duty of the jury to put themselves, as nearly as possible, in the place of the accused, when he is supposed to have committed the crime with which he is charged. I ask you to do that in this case.

Over three years have elapsed, gentlemen, since the crime was committed with which I am charged. It would be unfair to me for you gentlemen, who are here in the quietude of this little city, where the strifes and turmoils of three years ago, are not now felt, and scarcely realized, to try me from the jury box here. I ask you to go with me back to those happy days and put yourself in my place.

Suppose, Mr. Wyatt, you had been elected to the office of Secretary of State, as I was elected. Suppose that you had spent months in trying to get the nomination; suppose that after you had spent much time and money. You finally succeeded in getting the nomination at the hands of your party; suppose that after you had been nominated that you entered upon a hard canvass for the election; suppose that

after many months of trying labor you were finally elected to the high office of Secretary of State; suppose that the Republican party of the State had the election machinery of the State in its hands; suppose they had passed a law and had it on the statute books of the State, whereby the Legislature had the power to appoint a State Board of three Election Commissioners, and suppose that the State Board of Election Commissioners had the power to appoint a County Board of Election Commissioners in every county in the State, and suppose that County Board had the power to appoint the election officers in every voting precinct in this State; suppose that the three State Election Commissioners all affiliated with the Republican party and that the law which gave them their being, gave them the power to appoint all three of the Election Commissioners in each county from the same political party.

Suppose that the members of the County Board and the three members of the State Board were clothed with ministerial as well as the judicial powers. In other words, that they not only had the right to tabulate the returns of the election and to issue the certificate of election to whomsoever they desired to have the office, but that they sat as a court to try all contested cases. In other words, if they had issued the certificate of election to your Republican opponent, they would then, under the law which had been framed, sit as a court to decide whether they had done the right thing or the wrong thing, when they issued your Republican opponent the certificate of election. Suppose that the precinct election officers and various county boards did on divers occasions throw out the legal votes which you had received; suppose that several precincts over the State had been contested by your Republican opponent on first one flimsy pretext after another, and that the election officers had refused to count that vote; suppose that several whole counties had been contested where you had received a large majority over your opponent, and that the county boards had refused to count the votes of these counties, alleging that the votes had been cast on ballots, too thick, or too thin.

Suppose that when the matter came up for decision before the State Board of Election Commissioners, all three of whom were partisan Republicans, but two of whom were lawyers and honest men, decided that they were only acting then in their ministerial capacity, and that it was their duty, under the law, their politics notwithstanding, to give the certificate of election to yourself and the rest of your Democratic colleagues on the Democratic ticket. Suppose that a majority of the Board did do that and that you were regularly and legally installed into office. Suppose that your Republican opponent was not satisfied with that, but declared his intention of still prosecuting the contest. Suppose that the two Republicans who had decided for you, in order to get out of the unpleasant predicament in which

they were placed, resigned their positions and left the one member who remained, and who had decided against you, to appoint two other members to act with him in the decision of the contest. Suppose that he appointed two Republicans, whom he knew would decide with him, and against you; suppose he declared his intention of doing that very thing; and that one of the men whom he appointed declared, through the public press, his position on the matter before it came before him as judge, and that he said in substance that he would decide for the Republicans when it came to him. Suppose that these two men appointed a third member equally partisan; suppose that the trial came up before these three gentlemen; that you file an affidavit stating that they would not give you a fair trial, and that you did not want them to try your case. Suppose that they said in response to that, that there was no law whereby you could swear them off the bench, and that they proposed to try your case; that the law under which they were serving gave them the right to decide your case, notwithstanding the fact that they had already virtually said that they would decide your case against you.

Suppose the very law that gave them the right to so act upon your case, over your objection and your protest, said in plain words that the decision of the men who refused to be sworn off the bench and who had already expressed themselves in your case, should be final and conclusive. In other words, when they decided against you, which they were declaring that they would do, that you could not take your case to any other court for relief; that their decision settled it; that it was a peculiar court; that it differed from the Circuit Court in that, if it decided against you, you could not carry your case to a higher court for relief. That in that particular it had privileges denied the Circuit Court. That it was a higher court than the Court of Appeals, in that the Court of Appeals could not review its findings; that its decisions were too sacred to be touched by human hands. Suppose they should say: It does not matter what we decide, that settles it. We have the power to throw out the votes of one county in the State, if we want to. We can throw out two, if we like, and that still is our business.

#### A PERSONAL ILLUSTRATION.

Suppose, Mr. Wyatt, that you, as a Democrat, received 75,000 majority over your Republican opponent and that the State Board of Election Commissioners were declaring it to be their intention to throw out the votes of the county of Scott, and the county of Grant, and the county of Franklin and the county of Owen and the county of Henry, which gave you a majority. They would not touch the vote of Knox County, although the same grounds existed for not counting the vote of that county, as existed and for not counting the votes of Scott and Grant and other counties. Suppose that it had been in their power

to have thrown out the vote of every county in this State that gave a Democrat majority. Then it would have been in the power of those three Republicans to have absolutely controlled the distribution of the offices of this State, the vote of the people to the contrary notwithstanding.

Suppose that these three Republican Commissioners were under no bond to discharge their duty. Suppose that you were unable, by reason of the law under which they were serving, to bring a civil suit for damages. Suppose that there was no law to punish them criminally for the basest and most fragrant violation of their sworn duty.

Suppose that, in addition to that, gentlemen, that the Capitol of this State was at Barbourville, Knox county, my home. Suppose that these three Republican Commissioners were sitting there in the heart of that Republican stronghold. You would expect to find all the town authorities and officials Republicans, all of the police of the town Republicans. Suppose that the contest of your case was going on under these conditions.

What would you have done, Mr. Mitchell? You would have been elected to one of the highest offices of the State by the great Democratic party. You have been commissioned by a majority of a Republican returning board to go to Barbourville to take charge of the office to which you had been elected. Two Republican Commissioners had given you your seat and you were there discharging, as best you could, the duties of that office. The Republicans, after it had been given to you, were declaring it to be their purpose to take the office from you, and were proceeding to do it under the conditions which I have described. You were chosen by the Democrats of the State to look after their interests. The Republicans were threatening to overturn the voice of the people. They were declaring it to be their purpose to make slaves of the people of the Democratic party; slaves so far as the right to vote, and have their vote counted as cast, were concerned. You had been elected; you were their representative; they were looking to you and the other members of the ticket to protect and uphold their rights of citizenship.

Now, what would you have done, gentlemen, under a state of case of that sort? You would have had to have done something. The law that the Republicans enacted for the purpose of robbing you, was on the statute books. Under that law, they had their officers serving. Under it, they were empowered to take your office from you; and from whose decision, the law itself said, that there was no appeal to any court in the land for relief.

I ask you what you would have done, Mr. Engle? Would you have crept quietly out of the town of Barbourville on the first train, gone to your home and said to your mother with trembling lips: "Those Republicans have contested the election of my office; they are threat-

ening to take it from me; there is a great deal of excitement up there; I am afraid I am going to be hurt; I wish you would tuck me quietly to rest in my little baby bed, where I can sleep and rest and where no harm can befall me, and let me there remain until this excitement is over. I am my mother's dear little boy, and I must not be in any place where danger might befall me."

Would you have done that, Mr. Engle? You would have been compelled to have done something. You either had to stand your ground and contend and fight, if necessary, for the right and liberty of your people or you would had to have to thrown up the white flag and surrendered. What would you have done, gentlemen? You know what you would have done, and so would I. There is not a man of you but what would have stood your ground. You, Mr. Wyatt, with your white locks and matured and ripened judgment, would have nailed your integrity high in the heavens and would have stood your ground until the last drop of your blood was drunk up by the soil of your State. You know that you would. You know that you would not have run to your home and, from that quiet and restful and undisturbed retreat, watched the proceedings from a distance.

Would you not have come to your home people, to the people of Scott, Woodford, Henry, Owen and Bourbon counties and asked them to have gone with you up to Barbourville and there, by petition and protest and remonstrance, begged those in power not to disfranchise yourselves and your countrymen, when such conduct on the part was endorsed and sanctioned by the leaders of your party? You might not have taken your guns along, but more than likely you would, if you had been going to the heart of Republicanism in this State. More than likely you would, if you knew those among whom you were to go were armed to the teeth.

If you had not tried to have aroused the people to protest; if you had not tried to have influenced, by petition, those who held the fate of your office and the liberty of the people of your State in their hands, I ask you to tell me what you would have done? Would you have sat tamely around on the streets of Barbourville and have said that it looks like they are going to rob us; folded up your arms and sighed sighed over what you were about to lose? Or would you have, by every legitimate means in your power, tried to preserve, intact, the liberties of the people and keep off the fair name of your State the stigma of the robbery of the dearest right of Kentucky's freemen?

Gentlemen, that is what I tried to do in all good faith. What was left to the people to do but to petition and remonstrate? What could they do but plead with those in power not to take from them their dearest rights and most valued privileges? I did go to the mountains, gentlemen, and I brought the men down there. I felt that I was doing my duty to my State. I did not know but what similar

expeditions might come from other parts of the State. I did not know but what the voice of the people might be heeded, if that voice could be raised sufficiently loud in protest.

### ACTED IN GOOD FAITH.

It was as natural for me to have gone to the mountains to get men as it would have been for you men to have come to the counties of Scott, and Woodford, and Bourbon, the counties of your home. I did not dream of a conspiracy to murder Mr. Goebel. If I had wanted to have killed him, what would I have wanted to have brought 1,000 men to Frankfort with which to have done it? If the presence of mountain people in Frankfort was necessary to the death of Mr. Goebel, why did I not have him killed with the first crowd I brought to Frankfort? The testimony is in that record, gentlemen, that I brought some 300 or 400 men to Frankfort when the Election Commissioners were passing upon the question as to whom belonged the certificate of election. For what purpose did they come to Frankfort, gentlemen? If the last crowd was brought to Frankfort for the purpose of killing Mr. Goebel, as these men claim, why was it necessary to have brought the third crowd to Frankfort before doing the work? There were 300 or 400 men in Frankfort from the mountains soon after these contests were first instituted. That was more mountain men in Frankfort than there were in Frankfort at the time Senator Goebel was killed. If the presence of mountain men was necessary for the killing of Senator Goebel, why was he not killed at that time? What sense was there in bringing these mountain men to Frankfort for the purpose of killing Mr. Goebel? And the second crowd came from the 12th to 17th of January. There were some 150 of them—as many as were in Frankfort at the time Senator Goebel was killed.

Why bring these men to Frankfort and let them go away, if it was the purpose to have some one of them to kill Senator Goebel, or to protect the men in the building after it was done? Answer me that. If I had been base enough to have had Senator Goebel killed at all, I was base enough at the time the first crowd of men came to Frankfort and I could have had him killed at that time, I suppose, as easily as I could have had him killed later. If a mountain crowd was brought there for that purpose, as is claimed, tell me why it was ever necessary to bring more than one. Why was the first crowd of 400 men permitted to come to Frankfort and go away without doing the work? Tell me that, gentlemen. Why was the second crowd ever permitted to come to Frankfort and return to their homes without doing the work? Tell me that.

If I could have gotten some member of the last crowd to have done it, I see no reason why I could not have gotten some member of the first or second crowd to have done it, just as easy. Do you

see any reason why I could not have done it, gentlemen; could not have done it just as easy?

The first crowd was brought there for the purpose of showing the interest the people had felt in the subject matter concerning which these commissioners had to deal. Judge Pryor and Capt. Ellis were honorable men. They both had been elevated by the people to positions of trust and honor; the people had confidence in them, and whether they decided that we had been legally elected because it was a fact, and out of deference to the will of the people expressed at the polls, or whether they did it as a cold, unsympathizing proposition of law, or whether they did it because it was right, and because the people were demanding fair play, we may never know; at any rate, the people did come to Frankfort at that time and the fact remains that the decision of that board was in harmony with the wishes and views of the people who came to Frankfort from the mountains when that canvassing board was in session.

We believed that their coming to Frankfort had had a good effect, and if one crowd had a good effect, why not another crowd have also a good effect when they came on the same or similar mission? The first crowd of people came to Frankfort solely for the moral effect; so did the third. Do you suppose, for one moment, gentlemen, that I would have brought 1,000 men to Frankfort if it had been my purpose to have Senator Goebel killed? They claim that these men were all conspirators. Do you suppose that I would have taken into my confidence 1,000 conspirators? Would I have held a meeting in the Agricultural office for the purpose of having murder committed with men who had never before seen each other? Would I have given out money in such large sums so publicly and so promiscuously? Would I have taken receipts for the money and from so many people? Would I have left behind me written evidences that I had entered into a conspiracy to kill and murder?

But these men say that my bringing to Frankfort of this large crowd of people constituted a conspiracy to murder Senator Goebel and the Legislature. A conspiracy, and a thousand people in a conspiracy! Do you think I would go to the mountains of Kentucky and take a thousand people into my bosom and make them conspirators with me? You never heard of a conspiracy of that character, where the taking of human life was intended. The bringing of that mountain crowd may have been an indiscreet thing. I want to be perfectly fair with you; but, so far as the conspiracy is concerned, you know you would not take a thousand people into your confidence and make them conspirators with you. Do you suppose that if that meeting in the Agricultural office had been a meeting of conspirators, that Culton would have had to been introduced to Van Zant; they had never seen each other before; or Van Zant would have had to been introduced to Hamp How-

ard; they had never seen each other before, and that they would enter into a conspiracy with themselves and me for the purpose of taking a man's life. That is unreasonable, and the prosecution has to admit it. They complain loudly that it is a conspiracy, but when you get down to the bed-rock of truth, they admit it was not a conspiracy.

There were eight members of that meeting, and out of that eight members but three have been indicted. If the Agricultural meeting was a meeting of conspirators, why indict but three of the eight. If it had been a conspiracy, Mr. Franklin, you would have indicted the last one of the people. You know it, and I know it, and the whole country knows it, and you have confessed, by your failure to indict them, that it was not a conspiracy. Do you believe I would have given out \$1,000 on that occasion and have taken written receipts for it, leaving behind me written evidence of the fact that I had entered into a conspiracy then and there to bring about the death of my fellow-man? Do you think I would have done that? Do you think I would have left that meeting and gone out in the city of Frankfort and sent a dozen tlegrams to people out in the country—Judge Bingham, Supt. Siler, "Hop" Donaldson, Rice and others, telling them to meet me at London? What for? For the purpose of entering into a conspiracy? If the meeting in the Agricultural office constitutes a conspiracy, certainly the meeting at London constitutes a conspiracy, because those people met on exactly the same mission and for the purpose of carrying out exactly the same purpose. At that time and place there met Judge Bingham, Superintendent Siler, J. Hop Donaldson, Capt. Rice, Early and others, and none of these people have been indicted by the prosecution. Many of them were older men than I, and knew more about men and affairs than I do. Then, if that meeting was a conspiracy, these men should have been indicted. Do you believe that if that meeting had been a conspiracy, I would have given out a lot more money and taken written receipts for it, leaving behind me further evidence of the fact that I had entered into a conspiracy to murder my fellow-man? Do you believe I would have gone to Barboursville, Ky., and from carrying arms openly, calling attention to the people all over the world, that they had entered into a conspiracy to bring about the death of their fellow-man, and that they wanted to give it all the publicity possible? It is unreasonable.

If the bringing of the mountain crowd to Frankfort was a part of a conspiracy, why have you not indicted Capt. Steve Sharp, who presided at the meeting they held on the steps of the Capital of the State? Why haven't you indicted Mr. Berry, Mr. Nazor, Judge Catron and others who were appointed a committee on resolutions at that meeting, and presented them to the body for their consideration? Why not indict some of the men of the Blue Grass who participated in that meeting?



If the idea had been to take human life, do you suppose that I would have had the men to have carried their arms openly and come on a special train and worn badges, and thereby warn the other side that we were there and to get ready for us? Would we have notified the other side of our coming, if we had intended to have killed them? If it had been the purpose of the mountain men to have cleaned up the Legislature, as Culton puts it, would it not have been far wiser to have brought only small arms? One pistol would be worth a dozen rifles in a close fight like that.

### WHAT GOOD COULD RESULT?

And what good would the cleaning up of the Legislature do me? Would you have taken a crowd of your friends to have gone up to Barbourville for the purpose of cleaning up the Legislature in the case I have supposed, when the members of the Legislature had nothing to do with your office, and when the mere fact that you had killed a member of the Legislature, or a Republican Governor, would make the other Republicans who had charge of your contest decide against you? It would have but one possible effect on your contest I have supposed, and that, in the excitement of the hour, when the blood was hot, to turn you out of your office, whether your opponent had been elected or not.

Do you suppose that I would have brought a crowd of people down to Frankfort for the purpose of killing Mr. Goebel, or the members of the Legislature, when it could have had but one possible effect on the office I was trying to hold, and that to deprive me of it, in the excitement of the hour and to realiate against the outrage done in killing members of the Legislature, or the contestant for Governor? What if that crowd had gone up into the halls of the Legislature and have killed a dozen members of the Kentucky Legislature, as these gentlemen allege was the purpose for which they were brought to Frankfort? What effect would that have had on the office to which I had been elected? Let us see.

Would not a storm of indignation have swept over this State? Would not the people have stood aghast at such a procedure? Would not the heart of every honest man in all this land, have beat with indignation at such brutal and cowardly atrocities? If the Republicans had brought about such a catastrophe, would not the whole State have said: "Yes, take their offices away from them; they are unworthy of them?" Would not the people have demanded that if such a gang of vultures, had been elevated to high official position, that they should be taken from power before they have another opportunity to further disgracing our State? Would not I have known that that would have been the result of such a thing as that? Would I not have known

that such a course would have taken from me my office? Would I have done that, when I was trying to hold it?

If I had been so constituted that I would have resorted to murder in order to have held office, would I not have had Mr. Poyntz killed when Pryor and Ellis resigned from office? Had he been dead, the Governor, under the law, was the man who had the power to appoint all three of the Board of Election Commissioners. Had Poyntz been killed, Gov. Taylor would have appointed three members on the State Board of Election Commissioners, and they would have decided that I was elected, and that I was entitled to my office. That is the law in this State. No well-informed man doubts it.

If I had wanted to kill anybody, in order to have held my office, I would have killed somebody that would have done me some good. Messrs. Pryor and Ellis resigned their office on the 22d day of December, 1899, and Mr. Poyntz did not appoint anybody to fill their places until some time afterward. If Mr. Poyntz had been killed within that interval, the law is as plain as the noon-day sun, that Taylor had the power to have appointed three men to have composed the State Board of Election Commissioners. He would have appointed three Republicans. These three Republicans would have decided for us and every State officer, from Lieutenant-Governor down, would have been holding the offices at Frankfort to-day, and no power short of revolution could have prevented us from doing it.

If I had been willing to have committed murder to have held office, would not common sense say to do it that way? But here you have me charged with leading a conspiracy to commit murder that could have but one effect on the office to which I was elected, and that to take it from me. In one breath you say that I am a fool and in the next breath you say that I am the brains of the alleged conspiracy, as you have asserted. If I have sense enough to have been the brains of one conspiracy, I have sense enough to have been the brains of another. And, if I had been in the killing of anybody, I would have been in that killing, that would have helped Powers to have held his office, and not in the one that would have been sure to have taken it from him. Is this not common sense, gentlemen? Would I not have procured my man and have sent him to where Mr. Poyntz was and there have killed him? They say that I am an arch-conspirator and murderer, and a fiend and an assassin. Why did I not do that, gentlemen? And then have gotten a pardon for the man who did it and one for myself before Gove. Taylor was ousted from office, and when he had the legal right to pardon?

Why did I not commit murder that would profit me something? Why would I commit murder that would take from me that for which I was contending—my office? Ah, gentlemen, there is no conspiracy in bringing those mountain men down to Frankfort. I had but one ob-

ject, and only one, and that was to serve my State honorably; to represent faithfully those who entrusted me with power and office, with the very best of my ability; to preserve to the legal voters of this State the sacred right to vote for the candidates of their choice and have these votes counted as cast; to hold the office to which I had been fairly elected. My judgment may have been at fault, but my intentions were honest. If a mistake it was, it was one of the head, and not one of the heart.

When at Barbourville, in the meeting at the Anderson Hotel, when Mr. Black suggested that it would be impossible to keep those men quiet, and sober, and orderly, I agreed to put a man over each squad for that purpose. When they got to the depot at Barbourville, Mr. Trosper, Mr. Higgins and other witnesses told you that I went up and down the depot and said to the men that they must not get drunk on this trip, and that they must keep sober and orderly and conduct themselves in such a way as to cast no reflection on their end of the State. Mr. Lockhart told you that I said to him that it would not be very safe at Frankfort with a pistol, and it would not be very safe without one; that I advised him not to get drunk, when he got to Frankfort, and to keep off the streets; to keep sober, and to keep out of trouble. Other witnesses told you that I went through the train twice from Barbourville to Frankfort and cautioned the men that they must keep out of trouble. Does this look like the conduct of a conspirator, gentlemen? Those men were instructed to wear their badges. If they were going on a mission of murder, would they be advertising it to the whole world?

And when they got to Frankfort, what did they do? They stacked their arms. They put them away. If murder had been their mission, why put away their instruments of war? If they came down there to have killed Senator Goebel, or members of the Senate, or House of Representatives, why did they not hold to their arms, and use them for the purpose for which they were brought? The Legislature was in session that day. Why did they not take their guns and go up stairs and say to the members of the Legislature: "We have come to settle this contest." Why give thirty minutes in which to settle it? According to these gentlemen, these mountaineers would rather kill some one than not. But Culton says that the Legislature was given thirty minutes in which to settle the contest. Cecil says fifteen minutes. Why did they not go up there and say: "Gentlemen, we will give you thirty minutes to settle this contest;" and if they did not settle it in thirty minutes, why did not they kill off enough Democrats to make the Republican majority? That is what Golden says was the program. The men were there; they had their guns there; there was nothing to hinder them from carrying out the program, as suggested by Golden, and Culton, and Cecil.

The old, old adage, "Actions speak louder than words," is applicable to this particular case. Culton said that they were coming down there, and that they intended to give the Legislature thirty minutes to settle the contest, and that if they did not do that, it was his understanding that they intended to kill them. George S. Page, who was a member of the same meeting, where I was supposed to have made a remark of that kind to members of the meeting, testified that he did not hear me say anything of the kind. T. C. Davison was also a member of that meeting, and he said that I did not say anything of the kind. George S. Page, H. H. Howard, H. S. Van Zant and T. C. Davison said that they were members of the Agricultural office meeting, and that I did not use the words attributed to me by either Culton or Cecil, but that I told them and other members of the meeting, to get good men to come to Frankfort for the purpose of petitioning the Legislature.

### WHY DID THEY NOT KILL?

But the best proof of the pudding, is in the eating of it; and the best proof of what the men came down to do is what they did. It is confessed by everybody that there were enough to have carried out our plan or anything that they might have determined upon. And since there was nothing to have prevented them from giving the Legislature thirty minutes to settle it, and if they did not do it, to have killed the last one of them; and, since they did not kill any of them; since they never tried to kill any of them, the conclusion is inevitable that they either did not come down to Frankfort for the purpose of killing the Legislature or giving them thirty minutes to settle the contest, or they failed to carry out their plans when they did come. There is no escape from that conclusion.

We have heard a great deal about the killing of members of the Legislature in the Legislative hall, but we have heard nothing about a fight in the Senate, or killing members of the Senate. How would a fight in the Legislative hall effect Senator Goebel or other members of the Senate? The two bodies are separate and distinct, and occupy different apartments, and if it had been the idea to have killed Senator Goebel in a brawl, the idea would have been, not to have a fight in the House, but a fight in the Senate. If you wanted to kill the proprietor of the Lancaster Hotel, here in Georgetown, in a fight, would you go into the Wellington Hotel and there raise a fight? You would go to the hotel whose owner you wanted to kill. If it had been the idea to have killed Senator Goebel in a fight, the fight would have been raised in the Senate; not in the House. That is common sense, gentlemen. These gentlemen realized the force of that, and in their effort to try to avoid the effect of such reasoning, they take the more absurd and ridiculous position that the idea of the Republicans was

to kill off enough Democrats to make a Republican majority. In other words, instead of killing one man, to kill a dozen or two.

If a fight had occurred in the Legislative hall, what would have been the result, aside from the one I have already referred to? Only one; and that is, that a great many of the Republican members would have been killed, as well as a great many Democratic members. And, surely, the Republicans would not enter into arrangements whereby their own members were to be killed, or any part of them? And all this talk about a fight in either House, has either been lies, deliberately sworn to, or those who talked it, are maniacs.

It is claimed that they wanted to kill the Senators and Representatives, so that when they came to vote on the question as to whether Goebel or Taylor should hold the seat as Governor, that there would be a majority for Taylor, and the way to get that majority was to kill enough of the Democrats to give the Republicans a majority. I have recently looked up just how the members stood politically. Counting the independent Democrats, who voted with the Republicans upon most measures, the Senate was Democratic by two votes, counting the anti-Goebel Democrats with the Republicans. And the House was Democratic by sixteen votes; so that on joint ballot, the Democrats had a majority of 18 votes; then, nine of them would have to have been killed before the Republicans would have had a majority, and it is safe to say that five Republicans would have been killed in the operation; for it would hardly be expected that none of them would be killed.

Then, gentlemen, is it not true that if there had been any arrangement by which a row or fight was to have taken place in either the House or the Senate for the purpose of killing enough Democratic members to give the Republicans a majority on joint ballot, for the purpose of out voting the Democrats and seating Gov. Taylor, we cannot escape the conclusion that the Republicans must have been warned of such a procedure on the part of their Republican friends, otherwise they would have as likely to have been killed in such a brawl as the Democratic members.

Excitement was extremely high; trouble was expected from the country at large; and those at the storm-center of the wild excitement that prevailed in the State were in daily dread that an outburst might come, at any moment, and their lives be lost. It is wholly unreasonable, gentlemen, that if there had been a movement on foot on the part of any Republican or Republicans in Frankfort to have slaughtered a sufficient number of either the Democratic members of the House or Senate to have given the Republicans a majority on joint ballot—I say that it would be wholly unreasonable to contend that the Republican members were not notified that such a catastrophe was coming, and for them to be prepared to take care of their own lives.

The prosecution says: "Yes, they were notified and that they were to fall flat on the floor upon the firing of the first shot." Then, gentlemen, if they were warned that such a movement was on foot, they became a party to this alleged conspiracy.

Then, you have forty-two members of the House and eighteen members of the Senate who were parties to this conspiracy, if such there was, to bring about the death of Senator Goebel. And if they were in the conspiracy, Mr. Franklin, why have you not indicted and convicted them? This county would like to know that. I fall at your feet and beg for that little crown of information.

Again, no man will believe that all the Republican Senators and Representatives would swear falsely if they were placed on the witness stand in this case. And if there were any plans or arrangements by which the Democratic members of either House were to be killed, the Republican members would certainly know about it; and if you believe in good faith, Mr. Franklin; if you have any faith, Mr. Campbell, in your claim that there was such a conspiracy to murder your law-makers or law-breakers, as the case may be, then why have you not called these Republican members who must have known about such a plot, to substantiate Golden and Culton and Youtsey, et id omne genus, in their statements to that effect, when they cannot be believed unless they are corroborated and that no one of them cannot corroborate the other. Then, gentlemen, it is not only true that Culton and Golden and Cecil & Co., are swearing to what they know to be untrue, but it is plain, as the further fact, that the prosecution knows that there was no such conspiracy to kill off enough Democrats to make a Republican majority; such is the talk of a lunatic, an empty worded idiot.

#### NO CRIME WAS COMMITTED.

But suppose, for the sake of argument, and that only, let us suppose that the crowd did come down for the purpose of killing the members of the Legislature. For the sake of argument, and for that only, let us admit for the time being, that they did come down for that purpose; suppose they came down for the purpose of blotting Frankfort off the map; suppose they meant to overrun civil institutions in this State and institute in their stead a reign of terror and bloodshed. They never came for any such purpose, but suppose they did, it is beyond dispute, beyond question, that they did not carry out the purpose for which they came, if they come on any such purpose. They came to Frankfort; they were orderly; they petitioned the Legislature; they went home; no hair on the head of a single man was harmed. If they came to do violence or harm they did not do it. That being true, there is no law to punish them for the intentions which were never carried out.

Let me illustrate. Suppose, Mr. Booth, that some one should go to the home of one of your neighbors for the purpose of stealing one of his horses; suppose that after he got there he concluded that he would not take the horses, and returned home, leaving the horses of your neighbor undisturbed and unharmed, would any one contend that he could be punished criminally for the intention he entertained, when that intention was not carried out? Nobody would contend that. There is not a lawyer on the other side of this case who will slander his professional reputation by asserting that the man could be legally punished. And if the intention of the mountain men was to murder, as Culton claimed their intention was, it was not carried out. If some man in this house had it in his heart to murder the stenographer here when this Court adjourns; Court does adjourn, and he is not harmed, there is no law to punish the man, whatever his intention may have been, and however clearly they may have been established. So you cannot punish a man for his intentions. And if the mountain people did come to Frankfort for the purpose of giving the Legislature thirty minutes to settle the contest, it is evident that they did not carry out their intentions and, therefore, they could not be punished for coming with these intentions. And it naturally follows that I could not be legally punished for bringing the mountain people to Frankfort, if they did come on a mission of murder.

But, gentlemen, they came with no such intentions. From the time they entered Frankfort on the morning of January 25th, until they left it, on the evening of the same day, their conduct bespoke a peaceful mission. It is different matter, as you gentlemen know, to control the conduct of everybody. Because one man should disturb church services, are we to conclude that it is the desire of all present, that the services be disturbed? Because some one of the mountain men should get drunk and say rash things, as Mr. Vreeland testifies that one did, are we to conclude, that all the rest of the men endorse such statements? It would be as fair to say that all the members of a church were glad, in their hearts, that the services were broken up, as to say that all the mountain crowd endorsed sentiment of violence. The way to judge the purpose of a congregation at church; the purpose of a mass meeting; the purpose of a public meeting, is to decide their purpose from what they do as a body, and not from some wild saying of some irresponsible member. Is that not true, gentlemen? How else can it be done?

Suppose that the people in this court house at this moment should call up—the citizens of Georgetown—to express their views as to whether or not a certain proposition should be enacted into a law by the town authorities. Suppose some one introduces a resolution declaring it to be the sense of the citizens of Georgetown here present that the proposition should be enacted into a law, and the chairman

of the meeting should say that the resolution is now open for discussion and some wild fanatic should arise and say: "Mr. Chairman, I am a citizen of Scott County and a resident of the town of Georgetown. I have helped to support your laws by my means for twenty years. Lawlessness still exists; I am in favor of wiping out of existence, every law that has been enacted by the authorities of this town. I am tired of law. I am in favor of not only that, but I want every particle of law that governs the conduct of the people of this State, whether common, municipal or statutory, immediately being rendered void." He sits down. He has had his say. The people pay no attention to his wild vaporings, but go ahead and say, by an unanimous vote, that they are in favor of the proposed enactment becoming a law for the government of the town. What would you say was the intention of that meeting? Would you say that the citizens were in favor of law or in favor of now law? How would you judge? You would judge from what a majority of them did.

And if one of you gentlemen should be indicted for participating in this mass meeting, for the offense of being opposed to law and order, Mr. Franklin and these other gentlemen would say, in their appeals to the jury, that you and all of you were scoundrels and lawless citizens at heart; that you did not mean what you said when you voted for the resolution for the purpose of having certain laws enacted for the government of the people of the town. These gentlemen prosecuting you would say that you were doing it for the purpose of covering up your real intentions. Is not that so, gentlemen? And when some mountain man at Frankfort on the 25th of January, not a member of the meeting, should happen to say some violent words, these gentlemen immediately say that they gave utterance to to the real intention of the coming of the mountain people. They say that those people who were assembled in a peaceful manner and passed resolution, begging and pleading that their votes be counted as cast; asking that our public servants not tarnish the fair name of our State with the overthrow of the most sacred of all the rights of the people; that it was a blatant mockery of their real purpose, and that they did no mean it.

#### MOUNTAIN MEN ACTED IN THE OPEN.

The mountain people held that meeting on the 25th of January when the noon-day sun was high in the heavens. There, in plain view of all the people of Frankfort, on the public square of the State, and on the threshold of the Capitol, witnessed by friends and foes alike. Was that the conduct of conspirators to murder? Ah, gentlemen, conspiracies to kill and murder one's fellow-man are not formed or carried out that way. I was never in a conspiracy, gentlemen, to do violence to anybody; but from what I have seen and what I know of humanity,



conspiracies are not framed in the open. The crimes that fill the annals of this country are not done with humanity gazing on. Burglars make their way to your home in the dead hours of night, when you and the rest of humanity are supposed to be embraced in the sweet arms of sleep. Thieves roam over the country and never lay hands on that which is not theirs when mortal eyes are supposed to see them. Rapists never select the crowded thoroughfares of our cities in which to committ their fiendish crimes. Conspirators who seek the life of their fellow-men do not hold public meetings in the blaze of the noon-day sun, on the Capitol square of their State; in the midst of the camp of their intended victims and in their very presence.

If the bringing of that mountain crowd was any part of a conspiracy to murder, and if I had a hand in it, I ought to be sent to the asylum, and there, with raving maniacs as boon companions, spend the remainder of my days, in the charge of those whose duty it is to care for the helpless in head. But these gentlemen claim, both publicly and privately, in Court and out, that I am not a fool. Then, if I am not, credit me with more sense than to enter into a conspiracy to fake human life with a thousand other fellow-conspirators and in the midst of a crowded city, with hundreds of those unfriendly to my cause looking on, and in the very heart of the camp of my suppose victims.

The claim on the part of the Commonwealth that the bringing of the mountain crowd to Frankfort constituted a part of the conspiracy to kill Senator Goebel, is an evidence of the weakness of their own position. The sober-minded part of the country repudiates such a claim. The sense of the land says that could not be any part of a conspiracy, and for the sake of your own reputations, gentlemen, you had better abandon it.

There is not a witness in the whole of the record who testifies that I ever had the remotest connection with any mountain man from the 25th to the 30th of Janury, except Cecil; Cecil, the indicted murderer, robber and rapist; Cecil, who had his alleged talk alone with me; Cecil, who is swearing for and getting immunity; the saintly Cecil, who refused, he says, offers of money for murder from Taylor, but who stands indicted for the robbery of Mr. Colgan for \$2,100. There is no proof that I procured any of them or advised any of them or tried to get any of them to kill William Goebel except the testimony of the pious and godly Cecil. Wharton Golden himself said that I did not have any talk with him after the large body went home. Culton told you that he had no talk with me in reference to the men remaining over at Frankfort or the work to be done by them; that he never talked to me concerning the killing of Goebel in his life.

And the hopes of the prosecution upon which they can base a conviction is that the men came upon an unlawful mission, and while thus engaged in that unlawful mission that Senator Goebel was killed,

which claim you know, gentlemen, is unfounded from the fact that the men had nearly all gone home and, that the others who remained had as much right to remain in the city of Frankfort as you or I. And the court told you further, gentlemen, in the admission of testimony to show threats on the part of the Democrats that they intended to take forcible possession of the offices as soon as the Legislature and the contest heard passed upon same, that those men had a right to remain on those grounds for the purpose of resisting any such attempt. If some one should try to take forcible possession of your home and throw you bodily out of it, you know that you would have the right to resist any such an illegal attempt, and you know further that you would have the right to call in your neighbors to help you resist it. Those men had the right, gentlemen, to remain on those grounds for that purpose, and that is why they did remain. The prosecution will not deny that they had the right to remain there for the purpose of preventing or helping to prevent the Democrats or anybody else from taking forcible possession of those offices. And nobody claims with any evidence to support it, that any one of these mountain men who remained over at Frankfort on the 25th of January killed or had anything to do with the killing of Senator Goebel.

Mr. Franklin did not believe, and does not now believe, that any one of those men who remained over at Frankfort did the shooting that resulted in the death of William Goebel; for when he came to make the indictment against the men whom he claims killed Senator Goebel, he did not include within it, a single mountain man who came with the large crowd of mountain men, nor a single mountain man who remained over after the great majority had returned to their homes. And if no man who came with the mountain crowd killed Senator Goebel, even if I did bring them for a million unlawful purposes, how could I be held responsible for the death of Senator Goebel, if none of them had anything to do with the firing of the shot, nor was present when it was shot?

Bear in mind, gentlemen, that no man who came with that crowd has ever been indicted for the firing of the shot that killed Senator Goebel. There has been only five men indicted for that—Harlan Whitaker, who lives in Butler county, and who did not come down with the mountain crowd; Dick Combs, who lives, I think, in Lee County, and who had nothing to do with the mountain crowd; Jim Howard, who was not about the mountain crowd and had nothing to do with it and was not with it; Berry Howard, who was not about that mountain crowd, did not come with it and had nothing to do with it; and Henry E. Youtsey, who lives in Campbell County, and who was at Frankfort and did not come down and had nothing to do with that mountain crowd. He says he did not. And when Mr. Franklin came to make the indictments against the men whom he says shot and killed Senator Goebel,

he indicted no one of that mountain crowd. Mr. Franklin has admitted by his conduct that William Goebel was not shot by any man of that mountain crowd, because he did not indict any of the mountain men for doing it. He says that Goebel was killed by Jim Howard and Henry E. Youtsey. Howard did not get to Frankfort on the 30th day of January until within less than one hour before Goebel was shot, and five days after the mountain men had come to Frankfort, and 800 out of the 1,000 had returned to their homes. Youtsey did not come with the mountain crowd, and had nothing to do with it, if his own testimony can be believed.

Then, if no member of that mountain crowd fired the shot that killed Senator Goebel, and if other men did fire the shot, as the Commonwealth claims by their actions in indicting others, then why should I be held responsible for bringing them down there?

But suppose, for the sake of argument, that some of the members of that mountain crowd had killed Mr. Goebel; suppose that Jim Howard, and Berry Howard, and Henry E. Youtsey, and Dick Combs, and Harlan Whittaker had never been indicted; suppose that some of the mountain men who came down with that large crowd had been indicted as the ones who killed Senator Goebel, would it follow, as a proposition of law and as a matter of justice, that I ought to be convicted? Should I be convicted, gentlemen, because I had the mountain men not come to Frankfort, Goebel might not have been killed? Should I be held responsible for every act of every mountain man because I was the cause of his being in Frankfort? Oh, no, gentlemen; that is not the law, and it has never been the law. Had I not been indicted for the murder of Senator Goebel, this trial would not now be in progress here. Had I never been born, I could not have been indicted. Am I to be held responsible because the Creator of the universe gave me an existence here on earth? Were my trial not in progress here, it would not have to become necessary for the Commonwealth and the defense to have summoned a lot of men from the mountains as witnesses here in this case. If some of these witnesses, who have been summoned here as witnesses for the defense should, during their stay in Georgetown, rob a bank or plunder a store, or kill a man, would it be fair to hold me responsible for either robbery or murder, because had it not been for me the crime would not have happened, when, as a matter of fact, I had nothing to do with the crime? I was the cause of their being in Georgetown; I summoned them as witnesses, and still, after they got here, without my knowing it, they entered into a conspiracy to rob a bank, or kill a man, if you please, and they do kill one of your Georgetown citizens, am I to be held responsible for that? And if I were the cause of those mountain men getting to Frankfort, and if, after they got there, they entered into a conspiracy to kill Senator Goebel, should I be held re-

responsible for that? It would be just as fair to hold me responsible for the supposed murder in Georgetown as it would to hold me responsible for the murder of Senator Goebel, under such circumstances as that.

The instructions in this case tell you that if I counseled, or advised, or procured the murder of Senator Goebel, that then I should be convicted. And, if I counseled, advised and procured the supposed murder here in Georgetown, I would be guilty. But I could not be guilty in either case unless I counseled, advised or procured the murder. If, after those mountain men got to Frankfort, and while they were waiting for the case to be decided, they grew impatient and came to the conclusion that they would end the contest by the killing of Senator Goebel, without my knowledge and without my procurement, and they did so kill him, is there a sane man upon top of earth who would contend that I ought to be held responsible for it? Is there a lawyer on either side of this case who would slander his professional reputation by asserting that I would? Will Mr. Franklin contend before you, in his argument, that if, after those mountain men came to Frankfort, that some of them got together and decided that they would kill Senator Goebel, without my knowledge, yea, even without my procurement, and did so kill him, that I ought to be held responsible for that, because, had it not been for me, they would not have been in Frankfort? No, gentlemen, he will make no such contention before you. We are all a weak, short-sighted set of human beings here in this world. Finite creatures with finite minds. Born into this world with imperfections and shortcomings. Oh! gentlemen, if we could but lift the golden curtain that shields our view from the mysterious future; if we could but see beyond the heights and into to-morrow; if we could but know of approaching dangers that are coming to seal the doom of some part of humanity; if we but could see the pitfalls before our feet, a great deal of the misfortunes and calamities and tragedies of life could be avoided. But no mortal man has been vouchsafed such gifts. There is but one who is omniscient; there is but one whose brain knows all; but one whose vision is clear enough to pierce the darkness of the future and tell what is to be to-morrow. If I could but have known that the coming of those mountain men would result in the death of Senator Goebel, if it did so result, they would never have been brought. If those ignorant people living at the base of Mt. Pelee, or those splendid Americans living at Johnstown had known what was about to happen to them, they would not have lost their lives. And for you, gentlemen, to say that I ought to have known that the bringing of the mountain men to Frankfort would result in the murder of Senator Goebel, is to require of me more wisdom and foresight than it has ever pleased an All-wise Creator to bestow on mortal man. You will not require it of me

But if the prosecution can be relied upon to name the men who fired the fatal shot, none of the mountain men had aught to do with it. No one of them fired the shot; no one of them was present, aiding or abetting those who did fire it. A different set of men altogether has been indicted for that.

### GOV. TAYLOR'S PARDON.

Let us now, gentlemen, turn our attention, for a few minutes, to the pardon issued to me by Gov. Taylor. It is claimed by the prosecution that I was in a conspiracy with a number of others to bring about the death of Mr. Goebel, and that it was a part of the plan for Gov. Taylor to pardon all those implicated. And in support of this contention they continue to say that Taylor did pardon myself and others. Let us look at this a moment, gentlemen. Let us apply the test of reason to what they allege to be true and see if the ground they take is tenable. In the first place, gentlemen, no one of the pardons was issued earlier than in the afternoon of the 10th day of March, 1900. They were not issued, gentlemen, until after Culton had been arrested and lodged in jail; they were not issued until after warrants of arrest were issued for myself and my brother and Finley and old man Davis.

The testimony in this case, is that on the night of the 8th day of March, 1900, Culton was arrested and an attempt was made to arrest old man Davis and myself at his home on Lewis street, in Frankfort, and that we made our escape to the State House square. The testimony, is that all during the day following that, old man Davis and myself, stayed in the Register of Land office, and on the evening of that day, when we had to make our escape until the mad passion of the hour was over, pardons were issued to us as a matter of temporary protection. It is in evidence, gentlemen, that I meant only to go to the mountains of Kentucky and there remain until the excitement died away, and that then I meant to stand my trial. You remember that Capt. Davis was issued a pardon at the same time that I received mine. Who is it, gentlemen, that now thinks that old man Davis had anything to do with the murder of Senator Goebel?

You remember that on the night of the ninth of March, after officers had tried to arrest him and me that I had a talk with Judge Yost as to what I should do. Judge Yost was my lawyer in my civil suit. Judge Yost thought it advisable that Capt. Davis and myself should go over to the State House grounds. He did not believe that we could possibly be protected by the civil authorities; that the state of excitement was such that we could not possibly be protected from mob violence. You remember that is the testimony I gave, gentlemen, and if I had not been telling the truth about it Judge Yost would have been called as a witness to contradict me. Judge Yost was a witness in the Ripley trial. He has been before your grand juries, Mr.

Franklin; you know to what he will testify; you know he did advise me that the civil authorities could not protect me. You remember that he stated that I could not possibly get a fair trial and that if I could get to the mountains of this State and remain there, until I could get a fair trial, and until the passion of the people subsided, he believed it would be the proper thing to do. You remember, gentlemen, Victor Anderson, one of the witnesses for the prosecution, testified that I wanted him to get Col. Breckinridge for me over the telephone on the morning of the 10th of March; I testified to the same thing, gentlemen. You remember I told you that I wanted to consult Col. Breckinridge as to what I should do, but that I was unable to get him. Remember that I said to you that.

"I had reasons why I wanted to be away from Frankfort at that time. In the first place, I did not feel that the civil authorities there could protect me from mob violence, whatever may have been their efforts along the line to have done so. Excitement ran high. Passions were inflamed. I did not believe it was safe for me, or that I would be protected, if I surrendered at that time. That is one reason why I wanted to get away. Another one was that I had advised with Judge Judge Yost, a lawyer, about the matter and he thought it best for me that I be away until after the passions of the people subsided. Another reason is, that \$100,000 had been appropriated with which to prosecute the men charged with connection in this affair. I was a poor boy. I did not have money of my own to fight properly a case of that sort. That is a great deal of money with which to prosecute anybody in a matter of that kind. I knew that it would be almost impossible to eliminate politics from the trial of this case and especially in Franklin County, the storm center of the excitement of State. I did not know at that time, of course, that I could get a change of venue to this county. I did not believe that if I were tried in Franklin county, where excitement ran so high, that my innocence would be a shield to me in the courts. Taylor would not place a squad of soldiers around the jail to protect me.

Gentlemen, I did not believe I could be protected by the civil authorities in Frankfort. I did not believe I could get a fair trial if I remained. I knew that my attempt to escape to the mountains was of expediency; I knew the dangers of arrest; I knew how attempted escape be construed; I knew how a pardon to me in this matter would be interpreted. I was not unmindful of the situation of affairs, and, gentlemen, I want you to put yourselves in my place; that is the best way to determine what you would have done.

#### PUT YOURSELF IN HIS PLACE.

Suppose you had been elected to a State office, as I was elected; suppose that the Republican contestant for Governor had been shot

down as Senator Goebel was shot down; suppose that you were charged with the assassination of the Republican contestant for Governor; and suppose that the Republican press of the State were loud in proclaiming you guilty and were daily and hourly fanning the passions of the people to a blaze. Suppose that the Republican Legislature had appropriated \$100,000 with which to prosecute you; suppose that you were to be carried into the Eleventh district to be tried for the alleged conspiracy; suppose that you knew that in that district you would be tried by a Republican Circuit Court; that a Republican Commonwealth's Attorney would prosecute you; that the jurymen who tried you would be summoned by a Republican Sheriff, and when they were summoned they would all be Republicans; suppose you knew that you were to be tried in that Republican stronghold, while the people were drunk with passion and their blood was hot with rage; and suppose that the prosecution against you had not only at their backs the strong and powerful arm of the Commonwealth, with all its resources; but it had, in addition to that, \$100,000 of the people's money at its command with which to purchase testimony against you; and suppose your lawyers that you had employed in the civil suit, and upon whom you relied for counsel and advice, told you that you had better get away for the time being; that the people of the State were swept off their feet; and that, in time of excitement, people apparently go mad, and that their reason is dethroned; and suppose that your lawyer should say to you that you had better get a pardon and get away to save your life until the people came to themselves; suppose you knew that if you did get away, whether you had one pardon or a thousand, and whether you tried escape one time or a million; that you knew within your heart of hearts that you were not guilty of the crime with which you had been charged, and that in the end your good name would be vindicated; suppose all this, gentlemen; I will let each of you, in your own hearts, answer that—what would you have done?

Why, it is not the first time, gentlemen, in the history of this country that innocent men have tried to escape the wrath of indignant people. We all know that Jefferson Davis, the President of the Southern Confederacy, after the Civil War was over, and after he was threatened with arrest for treason against the United States, tried to escape in a woman's dress, and was captured in a cornfield. At any rate, that is the generally accepted version of it. Davis knew that he was not guilty of treason; he knew that he had fought for the South and its cause, a cause he believed to be right and to be his duty. He fought for home and for his people; his case failed and he was charged with treason and tried to escape, gentlemen, not because he was guilty, but to save his life from the mad storm of passion that raged through the whole North. And you remember, gentlemen, that he also accepted a pardon for treason against this Government. He

did not accept a pardon, gentlemen, because he was guilty; he did not attempt to escape because he was guilty.

So, gentlemen, this is not the first time in the history of this country that innocent men have tried to escape from unreasoning hate and have accepted pardons for that which they were not guilty. What would you gentlemen have done had you been situated as I was situated? Would you not also have accepted a pardon? Capt. John Davis tried to escape; he was arrested with me; he also was disguised as a soldier; he, too, had a pardon in his pocket; and who is it that now claims that old man Davis was guilty of having any connection with the murder of Senator Goebel? The prosecution knows that he is not guilty. He has been given bond by them and sent home and told that he could remain with his wife and with his children. You know that he is not guilty, and yet he tried to escape. The very men whom the prosecution now claims fired the fatal shot that resulted in the death of Senator Goebel have no pardons. Isn't it in evidence here that Jim Howard has no pardon? Isn't it in proof that Youtsey has none? These are the men behind the gun, according to the prosecution, and yet neither of them have a pardon, while Capt. John Davis and Harlan Whittaker, who the world knows to be innocent of the crime charged against him, both have pardons. Then, what becomes of the claim of the prosecution that pardons were issued to those implicated in the murder of Senator Goebel?

And if the pardon had been issued to me, as these gentlemen claim, I want to ask you if, you don't believe that I would have used a little common sense in the issuing of that pardon, if I had been implicated in the murder of Senator Goebel. I want to ask you, gentlemen, if you don't believe that I would have used a little common sense in regard to that matter? This pardon was issued on the 10th day of March, 1900. Senator Goebel was shot on the 30th of January, and did not die until the 3d day of February, and the contest committee did not try to declare Goebel to be Governor until the 2d and 3d days of February. It is not claimed by any body that he was legally declared Governor until the 19th of February. If I had been in a conspiracy to have killed Senator Goebel, don't you know that I would have had that pardon issued at a time when the act of Gov. Taylor would have been legal? There is no question about the legality of his act before the contest committee decided against him. Why did I not have the pardon issued after Senator Goebel was shot, and before the decision of the contest committee? There could not have been any doubt as to its legality at that time. The gentlemen must either think that I am a fool, or, at any rate, they attribute to me most idiotic things. After the contest committee had decided that Goebel was rightfully Governor of his State, and after he died and Gov. Beckham stepped into his shoes and began to act as Governor of this State, in



a room in the Capital Hotel at Frankfort, and the contest was carried to the Supreme Court of the United States, don't you know that if I had been guilty and had not had the pardon issued before the contest committee decided for Gov. Goebel, that we would have had Gov. Beckham enjoined from acting as Governor until the Supreme Court of the United States passed upon the legality of his title, and before it did pass upon it, the whole of the legal fraternity knows that under that state of case that the pardon would have been valid.

Don't you know that if I had been guilty, as these gentlemen claim, and had hoped to have gotten a legal pardon, don't you know that I would have gotten a pardon during this time and would not have waited until the contest committee and the courts decided against Gov. Taylor ? The pardon was issued, gentlemen, under the state of the case that I have attempted to describe. It was issued not because I was guilty, but issued like the one issued to Capt. John Davis and to Jefferson Davis, President of the Confederacy, and others.

But this claim on the part of the Commonwealth in regard to the pardon and to my attempted escape, is like other claims in other things. Whatever I do and wherever I go, the prosecution construe it into direct and conclusive evidence of guilty. When I went to Louisville and locked my office door, on former trials they said that it was almost positive proof of my guilt. If I had failed to have locked it, it would have been more positive. When I told Burton in my office that I would withdraw from the meeting and have nothing further to with it, if violence was talked of, or contemplated, the prosecution says that I did not mean it; and when I called Todd to talk with Youtsey and persuade him from any unbecoming conduct, they say that I didn't mean it; and when I told the men who came down with the large crowd of people in front of the depot in Barbourville, that they must keep sober and conduct themselves in such a way as to cast no discredit on our end of the State, the prosecution says that the reason of that was, that I wanted them to keep sober in order that they might murder their fellow-man more effectively. Mr. Hendrick told you that I perjured myself on the witness stand because I testified with calmness and deliberation. What would he have said if I had testified otherwise? He said that I was guilty because I left my office for Louisville the Tuesday morning before the tragedy, and that I am doubly guilty because I returned to my office after the shooting. Whatever I do, gentlemen, it is twisted into damning evidence against me, and when I accept a pardon and try to escape to the mountains of Kentucky, they say that it is positive proof of my guilt, when you or any one else, who values his life, would have conducted himself as I did, under the circumstances that existed.

### HIS ACTIONS PROCLAIM HIS INNOCENCE.

And, gentlemen, there is proof in this case that rebuts all presumption of guilt that might arise in the minds of the most skeptical, either from my accepting a pardon or from my attempting to escape, and that is gentlemen, that at all times and under all circumstances I have maintained my innocence, not by my words alone, but by my actions as well. Murder will out, gentlemen, and had I been guilty of the murder of Goebel, I certainly would never have appealed my case after the first jury had rendered a verdict of guilty and sentenced me to the penitentiary for life. We all know that the secret of murder cannot be kept.

Daniel Webster, in one of the finest criminal speeches of his whole life, said concerning the fact that murder will out: "Such a secret is safe nowhere in the whole creation of God. There is neither nook nor corner where the guilty can bestow it and say it is safe. The human heart was not made for the residence of such an inhabitant."

And it is in accordance with the experience of mankind that murder will out. I have maintained all the time, and now maintain, that the murder of Senator Goebel will be known. Could I have afforded it, had I been connected with it in the slightest, to have appealed my case after having been given a life sentence the first time? Could I have afforded to have appealed my case after I had been given a life sentence the second time? Suppose that one of you gentlemen had been guilty of the awful crime of assassinating the leader of the Republican party, and suppose that you were being prosecuted in a Republican county, before a Republican Circuit Judge, with a Republican Sheriff to summon the jury, with a Republican prosecuting attorney to prosecute you, with the resources of the great Commonwealth of Kentucky at his disposal, and with \$100,000 laid at his feet to unearth the murderer, with detective prying into every nook and corner of this Commonwealth and into the secret of every home within its confines, and people daily making confessions for immunity—I ask, if you had been guilty of the awful crime of assassination under such circumstances as these, and had been given a life sentence, I ask you if you would not have accepted imprisonment with open arms and risked your friends to have, at some time come to your relief?

If you were guilty, gentlemen, you would not know on what day that guilt would shine forth like a blazing sun; you would not know at what hour your connection with the murder would become known to the world, with one great political party, to say the least of it, trying to make known your guilt; with the resources of the State and \$100,000 and droves of detectives working to that end. You would not know on what trial your life would pay the forfeit of your connection with that murder. I ask you, gentlemen, as sensible men, would any of you have appealed your case the first time under the cir-

cumstances that I have described? Would you have appealed it a second time? No, gentlemen, you would not. No one of you would, had you been guilty. Neither would I, gentlemen. I would have been glad to have saved my life and looked forward to some time when my friends could come to my relieve and secure my liberation.

Put yourselves in my place. Suppose, Mr. Booth, you were the defendant in this case instead of me. Suppose that you had your case in the Court of Appeals the second time, November 30, 1902. Suppose on that day Henry Youtsey had given a statement to the country that he was willing to go on the witness stand and tell all he knew. Suppose that you were alleged to be implicated with him in the murder of Senator Goebel. Suppose the prosecution had always maintained that the fatal shot was fired from your office and that you were instrumental in having it fired from there. Suppose you had been convicted on two former occasions by two juries, on the theory that Youtsey and others had gotten the key from you or your brother, as a means of entry to the office. Suppose the minority of the Court of Appeals had accepted that view of it, and handed down dissenting opinions in your case. Suppose that most of the testimony against you was the testimony of star witnesses, swearing for immunity. Suppose you knew that the prosecution had always been able to prove by such men, any statement it desired.

Suppose that the Court of Appeals that had been politically your friends, had changed its complexion and had become politically your foes. Now, I want to ask you this question: If you were implicated with Youtsey in the murder of Senator Goebel, and he was declaring that he intended to take the witness stand and tell all about it, wouldn't you have ceased to fight your case at that moment? Wouldn't you have had your lawyer go before the Court of Appeals and dismiss your case and have gone to the penitentiary, and possibly have saved your life in a future trial?

Wouldn't I have done that? Wouldn't any one with a spoonful of brains in his cranium have pursued that course? Or wouldn't I have had my lawyers, by dilatory tactics, pushed my case over into the January term of the Court of Appeals at the beginning of 1903, when it became Democratic, and let those Democratic Judges affirm the decision in my case, and go to the penitentiary. No public censure would have come to me, because ostensibly, I would have fought my case to the bitter end. I did not do that; I am not guilty.

I am not guilty; my conduct proves that. And if your verdict in this case should be "We agree to find the defendant guilty," if, by your verdict, you should blight and ruin the life of one of your fellow citizens, let me say to you now, gentlemen, that you will regret it the longest day you live. I am innocent, gentlemen; some day the world will know it. But when your verdict is rendered and you are dismissed

and discharged from this case, if it should become known to-morrow that your verdict was no less than murder, your power to undo the wrong and palliate the crime you would commit, would be beyond your reach. You can neither correct nor modify it. All the sleepless nights you would spend over it could not alter it; all of your bitter tears of regret could not change it. Your sobbing, aching hearts and stinging consciences would go with you to your grave, and still you would have done that which your suffering could not change; your agonies could not alter.

But, gentlemen, you will not render such a verdict. The facts proved in this case do not warrant a conviction. The law does not authorize it, and you are going to give me my liberty. The scenes of this trial are rapidly coming to a close. You and I will part, possibly never to meet on earth again. I never cast my eyes on you until the trial began; I may never see you more. At the furthest, gentlemen, we will all soon be laid in the icy arms of death. We owe it to ourselves, to our families and to our country and to our God, to be honest men while we live. Whatever fate befalls us, let us do our part of the duties of life and meet all its responsibilities like men. Let not our pathway, while we live, be filled with cruelties to the helpless, wrongs to the unfortunate and injustice to the innocent.

We are a band of brothers, sent here to earth to remain but a little while, to fitly prepare ourselves for complete enjoyment in the world to come. I know of no better way to prepare for the happy realms above than by doing good to others here below. You have it in your power to lead an innocent man to the gallows, to prison, or to liberty. And remember, that the good you do to others, your uprightness of life, your stand for humanity and truth, will follow you to commend you. Whether in the future you roam over distant countries or sail over unknown seas, or whether you spend the remainder of your days on earth here amid the best civilization, the most hospitable people upon which the sun of heaven has ever shown; wherever you may be and in whatever circumstances placed, if you do this day's business as justice and innocence and truth demands that it should be done, you will always look back upon it as the most glorious days' work of your whole life.

When the burden of many years and cares, and the frost of many winters and the decrepitude natural to old age are bringing you nearer to the dark waters of death! when you have retired from the battles and trifles of a busy life; when you are caring less about the politics and policies of this world, and more about your safe arrival upon the shores of the next; when the mysteries surrounding this awful murder shall have cleared away and the guilty be known, and the innocent are relieved of suspicion; when it is known to this world, and it will be known, that an innocent young man was torn from a position of

honor to which his fellow countrymen had elevated him, and driven like a common criminal all over this country in shackles and chains and forced to pine away his young life in a prison cell with worthless negroes, crawling lice and creeping vermin; then, gentlemen, your hearts will bound with the joy of youth, and your good names will be heralded over the earth as being just men; men whose oats and whose sense of justice and devotion to duty lifted them above the mad passions and prejudices of the hour, and had them render a verdict in accordance with the law and the evidence and justice. It will be a verdict, gentlemen, of which your children and grandchildren will be proud; one that our country will point to with pride. It will bless you and yours as long as life lasts, and be a passport into the realms of bliss beyond.

And I know that you are going to give me my liberty, gentlemen. I feel it in the very air. I see it in the faces of this vast crowd of listeners whose very hearts are bleeding because of the agonies I have suffered and the wrongs I have had to endure. Witness how their tears are flowing because they live in a country where a crime worse and blacker than the awful crime of assassination has been inflicted upon one of their fellow-men, under the forms of law and in the name of justice. I feel that you, gentlemen, will say by your verdict, that you deplore the wrongs of the past; and that you will put it beyond the reach of mortal man to again repeat them in this case. I believe you will say that while Kentuckians are the quickest to do wrong that they are the soonest to repent.

Gentlemen, there are too many men swearing for immunity in this case; too many swearing for money; too many detectives; too many star witnesses. I had hoped to discuss at some length the star witness in this case, but I have already taxed your patience too long. I wanted to tell you, when Col. Campbell, with whip in hand, took a front seat in the band wagon of safety and began to conduct the course of these proceedings, and ordered that all who would ride with him should have everlasting life, so far as he was concerned; a safe journey through the inviting fields of freedom, and a continued feast on that \$100,000 reward fund; and that all who failed to take advantage of this golden opportunity should meet with death and destruction; how Golden took early advantage of this blessed opportunity, climbed over the front wheels of the band wagon of immunity, and took a soft seat my the side of his Savior, Col. Tom C. Campbell.

I wanted to tell you how Culton was lead, on the arm of his brother-in-law, Ed Hogg, into the room of Col. Campbell, at the Capital Hotel, at Frankfort, and there told such a story as restored him to his liberty, his wife and loved ones. I wanted to tell you how Cecil found his way from California into the home of the Commonwealth's Attorney, and from there to the grand jury room, and from there to

liberty, and, as per agreement, came here to Georgetown and tried to swear my life away. It was my desire to tell you how Youtsey had began making confessions within six hours after he was lodged in jail, and how he said at that time to Col. Campbell: "I never discussed the killing of Goebel with Caleb Powers." And know he afterwards changed that story when he had been kept on bread and water for eight consecutive days in a prison cell at the penitentiary at Frankfort. I wanted to tell you something of his pretended "fits," on his own trial, and how he tried to become a star witness against me during my first trial; how he accepted a life sentence in the penitentiary for alleged complicity in Goebel's murder, and how, at all times, he had maintained his innocence to his own dear wife. I wanted to tell you something of how Golden and Culton and Cecil and Youtsey, according to their own statements, wanted to kill and murder, before Goebel's death, and how, now, they have pious longing in their saintly (?) souls to spread the truth broadcast over the land. I wanted to tell you with what "coming" appetites they have testified; how little they knew when they began testifying and how much they all know now; how they have given to the world new and revised editions of "all they kno" concerning the killing of Mr. Goebel.

It frequently occurs that books of various characters are often revised, giving to the world the latest and the best thoughts of authors on the subjects treated. But it is the first time that I have ever known of the sworn testimony of a witness in court being issued in so many new and revised editions. It has always been my idea that a witness was sworn to tell the truth, and the whole truth, on his first examination, and that he is supposed to do it. It has been my experience, gentlemen, that instead of one memory increasing with age, that it often becomes faulty and treacherous. It is the experience of humanity, gentlemen, that the further in the point of time, events are removed from us, the more dimly we see them. Things that were clear and vivid when they occurred, become faint and shadowy in the lapse of time. But these star witnesses furnish us a remarkable and peculiar exception to the rule that applies to all honest humanity. The further they are removed from the fatal and unfortunate tragedy of January 30th, 1900, the more vivid is their memory; the more useful their knowledge.

I would like to show you how Golden's alleged conversations always occurred with me when I was **alone**, except two instances where he is overwhelmingly contradicted by others; how Culton's alleged conversations always occurred with me when I was **alone**, except on one instance, and in that instant we find him contradicted by Messrs. Page, Howard, Van Zant, Davidson and others; how Cecil always had his alleged conversations with me when I was **alone**, except where he is contradicted by Van Zant, Davidson, Page and others; how

Youtsey always had his alleged damaging conversations when I was entirely **alone**; how Broughton had his alleged conversation with **me** when I was **alone**; how Noaks said he always talked to me **alone**. Is this not a remarkably strange state of case, that these star witnesses always talked to me when I was **alone**, and putting it out of my power to contradict their alleged conversations by others than myself.

And is it not stranger still, that Golden and Culton and Noaks and Anderson and Youtsey and Cecil and Broughton were the only ones to whom I confided my intention to murder? Is it not strange, that out of the number of prominent and reputable men with whom I associated at Frankfort, that not a single one has ever been produced to prove my murderous plans? Is it not most remarkable that I did not converse with the leaders of the party and representative citizens about the way the contest should be settled—about the surest way for me to hold the office for which I was contending? Has it never occurred to you, as it has to all other sensible people of the country, that if I talked to Golden and Culton and Noaks and Anderson and others of like liver exclusively about the best way to settle the contest, that I must have been a fool of the first water? Does it not strike you, gentlemen, as being most peculiar that the only people in the whole State who had my entire confidence during these stirring times, were Noaks and Anderson, who are now confessed perjurers, and Golden, Culton, Cecil and Youtsey, who are now under indictment in this case, and swearing for immunity?

Is it not strange that the now pious Broughton recommended, as he says, his own brother as a suitable man to kill Senator Goebel before the tragedy, and at this trial had to be run down by Detectives Hardin and Griffin, before he could be gotten to the witness stand to testify for the Commonwealth? There are reasons for all these things.

### A PLAGUE OF DETECTIVES.

There have been too many detectives in this case; too many lawyers playing the part of detectives. There has been too much of an effort to convict some one more or less high in politics, and too little attention paid to the prosecution of the real murderer. You know this policy was expressed by Col. Campbell in his first speech in my case, when he said: "Small gratification would it be to those looking for revenge, if such there were, to have a 'wretch kern' from the Highlands convicted and hung. Such a man, if necessary, should be turned loose to the end that the conspirators who procured the cowardly deed to be done might be convicted." You see, gentlemen, they have publicly expressed that they cared nothing for the "little fishes;" that it was their desire to convict more prominent men.

Look at this spirit of the prosecution, together with the fact that detectives have played a most conspicuous part in all these trials, and

we are not astonished, or should not be, at the prosecution proving alibis for such men as Johnson, or the production of so many star witnesses; such men as Noakes, Anderson and Weaver. We need not be surprised that such a man as Golden is to-day enjoying his liberty; and that Culton is a boon companion of those whose duty it is to prosecute him, and that Cecil is getting his liberty for his testimony, and that Youtsey expects his feet soon to walk on freedom's soil for his services here as a witness.

There can be no doubt, gentlemen, but that the detectives have played a most important part, and a most damnable part, in the production of the evidence in this case. You remember, Col. Campbell said in his first speech to the jury in my case: "Detectives were called in, but they were baffled like the hounds in the pursuit of the fox which jumped to the sapling over the precipice, and then under the ledge of rock." He says that in that dilemma that Mr. Franklin said to him one evening: "You are not known in Eastern Kentucky; go there," There is no doubt but that he went there, gentlemen, for he met Robert Noakes at Big Stone Gap, under the non de plume of Cleinmire. Mr. Campbell said in his speech: "Men whose time was worth \$5 a day worked in the mines of Bell County for less than one-fifth of that sum for the purpose of accounting for their presence in that county. One man painted fences and rocks in Laurel County with signs, and gave away hundreds of bottles of medicine for the sole purpose of accounting to such fellows as Jim Sparks and Jim Howard and others of like kidney as to why he was in that county."

And, gentlemen, we do not have to rely upon Col. Campbell's statement that detectives have been very busy from the very beginning of this prosecution. You remember, that Golden testified that Tom Cromwell, a detective, who had been up in Knox County, came to the Capital Hotel, in Frankfort, about the 2nd of March, 1900, and wrote Golden a note to come over to the Capital Hotel. You remember, that Golden told you that in response to the invitation to meet Tom Cromwell at the Capital Hotel, that he presented himself in person, and the next morning, at the early hour of 5 o'clock, he was speeding away over the country to the historic city of Cincinnati in the arms of his savior, Col. Tom Campbell.

You remember when the theory of this case was being formulated, the theory that the shot was fired from the office of the Secretary of State, we find detectives playing important parts in that matter. You remember that Mr. D. Mead Woodson, that expert gentleman and expert witness. These expert witnesses are always a remarkable set of fellows; they can get out here in the streets of Georgetown and measure a cow's track and tell you the price of butter in New York City. And when this man Woodson was down at the hackberry tree proving to a mathematical certainty, with his little surveying pins and



a yarn string, that the shot that killed Goebel was fired from the office of the Secretary of State, he told you that Robert Harding and Dee Armstrong were present on that occasion. Who are Robert Harding and Dee Armstrong? They are detectives; the paid puppets of the prosecution who have lent their gallant services, sacrificing (?) services to the unearthing of the guilty (?) in this prosecution. When Golden was preparing to confess; when he was getting ready to turn State's evidence, we see the finger of Detective Tom Cromwell in the matter. When the bullet was found in the hackberry tree we find Dee Armstrong and Robert Harding officiating on that occasion. You remember the testimony of that most charming and most winsome lady, Miss Ella Smith by name, of the town of Barbourville, whose bewitching manner and seductive smiles captivated the hearts of all. You remember that Miss Ella Smith, who was a witness for the prosecution, told you that Tom Cromwell wrote out her statement for her in Barbourville, and she committed it to memory and recited it for us. She recited it well.

Detective Cromwell swore out a warrant for my arrest; he swore out a warrant for the arrest of old man Davis. Detective Russell took a number of identifying witnesses to see Jim Howard. A number of them assisted in my arrest at Lexington. So you see, gentlemen, that detectives have been swarming the State like a drove of hungry vultures. You find them in the Capital Hotel when Golden confesses; you find them at Barbourville before he confesses; you find them at the hackberry tree when a block of wood was taken out of the tree; you find them present when the block of wood was opened; you find them in Cincinnati when Golden first confessed; you find them in Lexington with him after he confessed; you find them swearing out warrants of arrest; you find them everywhere. There are too many detectives and too much perjury in this case. There are too many men who have their arms up to their elbows in that \$100,000 reward.

### THAT CORRUPTION FUND.

Do you want to help distribute that money, gentlemen? Do you want to become co-partners in that affair; if you do, the opportunity is yours. You have an earnest invitation on the part of the Commonwealth. If you want to help distribute that money you have the privilege; \$5,000 is offered for my conviction. You make it possible for those hired detectives to get their share of the spoils, for if the detectives do not get the \$5,000 offered for my conviction, who does get it, gentlemen? No part of the \$5,000 offered for my scalp goes for the purpose of bringing the witnesses here, either for the Commonwealth of the defendant. The State pays for the bringing of witnesses here for the Commonwealth, and the defendant has to pay the expenses of his own witnesses. It is not for the purpose of keeping wit-

nesses of the Commonwealth here; they are allowed \$1.00 per day, or part of a day, they stay here. It is not for the purpose of paying their mileage or their way to the train. The law allows them more than enough for that. It does not go to the paying of lawyers in this case, for the law that set apart the appropriation says that none of the money is to go for the payment of the lawyers. It is not for the purpose of paying Mr. Franklin here for his services. He is allowed a certain salary, and is paid by the State. It is not for the purpose of paying you, gentlemen, for your services. You are allowed your per diem by the law of the State.

Then, to whom does it go? It must go to somebody. It must be paid for some purpose. There is no stipulation in the law appropriating this enormous fund, saying that any part of it shall be to perjurers and suborners of perjury. But such people will lay claim to that money. Did not Detectives Dee Armstrong and Robert Harding tell you from this witness stand that they expected to lay claim to this money if I am convicted? The detectives who have furnished the proof in these cases, and those who have sworn lies for pay, will lay claim to this money. Do not be deceived about it. They are now claiming it. Suppose Campbell should say to the detectives that he needs certain testimony; Harding and Armstrong would give ten witnesses ten dollars each, in addition to the Commonwealth's paying them a dollar a day and so much mileage, to come and testify to certain state of facts. It would not be good policy for any witness to swear to too much. That would not be skilled perjury. It would be bunglesome subornation. Here you have these ten witnesses swearing to certain statements for the sum of \$100. That is a small amount, but the evidence of ten witnesses is considerable testimony; \$200 at that rate would get twenty witnesses. That is not much of \$5,000.

You ask: Do you mean to say that witnesses can be bought that cheap? I answer: Yes; part of them can, but not all. It takes more for some. But you can put it down, gentlemen, that most every man who sells his vote at an election would sell this testimony. You know that there are plenty of these. You know that there are more of them than the mass of humanity supposes. So you see how easy it is to buy testimony when you have the money. But one says: It looks like some of them would be caught up with. And so they have been in this case. Weaver was caught up with; Anderson was caught up with; Noakes was caught up with; Davis Harrod, at Frankfort, was caught up with and is no more a witness in these cases; D. Sinclair, the man who forged the telegrams at Frankfort, was caught up with and is no more used as a witness in this case.

Yes, it is true that some of them are caught up with, but the smooth suborner or perjurer knows more than to do it that way. He has the perjurer to meet you on the road somewhere or to be with

you alone somewhere. Golden says that we always talked alone when we were talking about private matters. The smooth suborner and perjurer has no one present but you and the perjurer, and he has him say that while you are with him at a certain time and place, that you made such and such a statement. You have to admit being with him at the time and place. There is no one to help you out of your predicament; no one to deny for you that you made such a statement; no one to contradict the witnesses against you except yourself; no one to contradict them in this case except myself. Then, of course, the Commonwealth argues that my own testimony sustains the witness against me, and that, of course, I am trying to sear myself out. There is no way to contradict the perjurer save by my own testimony.

Such has been the testimony of all the stars against me. Such has been the testimony of Anderson and Noakes and Golden and Culton from the very beginning; such is the testimony of Youtsey and Cecil. Detectives and shrewd lawyers know how to prepare such testimony. That is the business of, by far, too many of them. Culton is a lawyer himself. He knows how to fix his. Golden's brother is a lawyer; he knows how to fix him. Col. Campbell could suggest to Golden or Culton that a certain bit of testimony was needed and for him to try and remember it. They are in the remembering business. It stands them in hand to remember well. They know it. It needs no detective work to encourage Golden and Culton to remember well. It needs no offer to them of money in the event that I am convicted, to spur them up to their best as perjurers. There are other incentives for them.

### DETECTIVES SUBORN PERJURY.

Then, you ask, does the Commonwealth's Attorney endorse it all, and is he a party to it all? I answer, no. I have known of cases where he has turned off would-be perjurers. The detectives go in the neighborhood of the witness. He suborns him. He then writes down to Mr. Franklin that a certain man would make a good witness for the Commonwealth. Mr. Franklin has him summoned either before the grand jury or as a witness in some of these cases. The witness tells his story. He makes a good witness, and Mr. Franklin puts him on the stand. That is a part of the evidence of conviction. And after the conviction is had, the detective will come forward claiming the \$5,000 for the discovery of the testimony that leads to the conviction.

Oh, gentlemen, be not deceived in this matter. They are already claiming it. It is a matter of current history, gentlemen, with which you are all familiar, that Dee Armstrong and Robert Harding, of Louisville, who have been the paid puppets of the prosecution in the investigation of clues, and who have attended every trial of my case, and who are here now, have already put in a claim for my former con-

viction, alleging that they furnished the evidence with which to do it. You remember the Fiscal Court of Franklin County offered \$1,000 reward for the arrest and conviction of Senator Goebel's assassin. Detectives Armstrong and Harding have put in a claim for that money, and ellege they furnished the evidence upon which Youtsey and Jim Howard and myself were convicted. They also have put in a claim for \$5,000 for the conviction of Youtsey. They have been here on the grounds marshaling and training their witnesses, and now await your verdict, in the hope that they will be well paid for that marshaling and training. Did not Armstrong tell you that? The detectives are waiting for that \$5,000 reward, gentlemen; that is the reason why they have bought so much testimony. They would purchase it against you as readily as they do against me, if there were as much in it to them.

Be not deceived about it. Do you think there is enough evidence in this case to convict me? Is there a single man on this jury who thinks it? If there is, I want to say to that man that if he will let Col. Campbell suppose two things, he can convict him of the murder of Mr. Goebel. If you will let him suppose that you were an active partisan Republican in the campaign and contests of 1899 and 1900, and that you went to Frankfort a few days before Senator Goebel was killed—that is all that is necessary, these two things. You may say you did not understand what your being a Republican or going to Frankfort would have to do with the killing of Mr. Goebel, or how you could be convicted for that. Let us see.

In the first place, he would charge, by indictment, a Golden, and and a Culton, and a Youtsey, and a Cecil, who reside in your neighborhood, or who were thrown with you in the transaction of business in the winter of 1899 or 1900. And you have got Goldenes and Cultons and Youtseys and Cecils and Broughtons in your community, gentlemen. Be not deceived by it. There are men in you neighborhood who, if they were indicted for an offense like this and could get their liberty by testifying against you, would swear anything that they were told to swear. You know that. There are men in your community who would swear your life away for even a small slice of \$100,000. You know that.

#### COULD CONVICT ANY JURYMAN.

Let me show you how you could be convicted for killing Mr. Goebel, by letting Col. Campbell suppose the two things of which I have just spoken. He would prove by some Wharton Golden whom you had working for you on your farm, that you were an active and violent Republican. This would be known to be true; this would help strengthen his testimony against you. He would prove by him that while you and he were alone together on the farm and about your

place of business, that you had said to him that Goebel ought to be killed; that if you were up at Frankfort and no one else would kill him, that you would kill him yourself. That is what Finley Anderson swore against me. He would prove by him that you discussed plans with him to kill Goebel in the Capital Hotel, on the streets of Frankfort, and from the office of the Secretary of State. He would prove by him that you said that you would be willing to kill off enough Democrats in the Legislature to make a Republican majority, and that you also endorsed the killing of the Democratic members of the Court of Appeals. He would prove by him that you said out at your barn one morning that if things didn't settle up at Frankfort pretty soon, that you intended to go up there and make use of a few Colts 45s or a Marlin rifle.

He would prove by Culton that he lived in your neighborhood during the contests of 1899 and 1900; that he often passed your home, and that you and he had frequent talks about the contest at Frankfort, and that you said to him that you believed that if a large body of mountaineers would come to Frankfort with their guns and either kill enough Democrats to make a Republican majority or kill Mr. Goebel, that the contest would end favorably to the Republicans; that you said that when Goebel was dead and in hell that the Democrats would not have another man who could hold them together. He would prove by him that you and he had come here to Georgetown about the middle of January, 1900, and that you showed him a letter you had written to Gov. Taylor enclosing \$25 to help defray the expenses of the mountaineers to Frankfort and advising their coming, and that your judgment was that when they got to Frankfort they should give the Legislature thirty minutes to settle the contest, and if they didn't do it, to kill the last damned one of them.

He would prove by some Broughon in your county that you approached him one day to find out who, in his judgment, would be a good man to kill Goebel, and that he referred you to Cecil and Steele. He would prove by some Cecil and Steele in your neighborhood that you did approach them and tried to get them to go to Frankfort and kill Mr. Goebel, and discussed with him how it could be done from the office of the Secretary of State. He would prove by Youtsey that he lived in your neighborhood before he went to Frankfort; that he knew you well; that at the time of the Governor's contest that he was at work in the hallway of the Executive building at Frankfort a day or two before the killing at the time you went to Frankfort, and that you said to him that you believed the only way to settle the contest was to have Goebel killed. He would prove by him that he fully endorsed that sentiment, and said that he had been trying to do that for several days and suggested that he now had a slick scheme by which he could go into the office of the Secretary of State and pull down the

window blind and shoot him from that office window and then run down the stairway, and that nobody would ever know it. He would prove by him that you endorsed that plan and pulled out of your pocket \$50 and gave it to him and told him to carry it out, and that you would leave the details of it to him, and that you would go in and see Taylor and have him call out the militia to protect Youtsey and others after the killing.

Take this state of the case, gentlemen, and why wouldn't I have a stronger case against you than they have against me? The mountaineers came to Frankfort on your advise; the shot fired from the office of the Secretary of State upon your endorsement; the militia was called out upon your suggestion. How would you get out of it, Mr. Rice? Golden, Culton, Cecil, Youtsey, have testified that there was no one present at the time each of them had their elleged talk with you. You could only contradict them with your own testimony, and the prosecution would say that you are the defendant in the case and swearing for your liberty and could not bebelieved, and, besides that, they would say that your own testimony corroborated the testimony of all these witnesses against you. They would say that you admit having Golden working for you on your farm and admit being with him at the time and places he aleges and that the only thing you deny is the damaging part of the conversations; that you substantiate the testimony of Culton by admitting that you did frequently talk with him at your gate during the contest, and that you admit coming to Georgetown on the occasion testified to by him. They would say that you corroborate Broughton by admitting that he lived in your neighborhood, and that he did have an opportunity of talking to you, and by the further fact that Cecil and Steele say that you approached them on the mission you talked to Broughton about. They would say that you corroborate Youtsey by admitting that you were at Frankfort at the time he testified to, and by the further fact that the shot was fired from the office of the Secretary of State and by the further fact that the militia was called out after he shooting.

If the jury who tried you should give full faith and credit to the testimony, there is no reason why that you or any other man in the community could not be convicted with \$100,000 and a horde of unscrupulous detectives to buy up the proof. Golden, Cecil, Youtsey, Culton and Broughton say that they had these talks with me, and that no one was present but themselves and me. I never had the alleged talks with these men. The Commonwealth is after a conviction in this case, and Dee Armstrong and Robert Harding are after the money. They will have rival claimants. Other detectives have been active. Detective Griffin, of Somerset, will be a formidable contestant.

By your verdict, gentlemen, do you propose to further this nefarious work? Do you propose to be a party to the taking away of the liberty of an innocent man? Answer me that, gentlemen. And you will be a party to it if you bring in a verdict of guilty, because, without such a verdict, they cannot get the money. As a citizen and tax-payer of this Commonwealth, do you desire to plunder the treasury of this State? In order to get the money to pay irresponsible detectives to suborn witnesses to swear away the lives of one of your innocent fellow-citizens? The opportunity is yours, gentlemen. The Commonwealth invites you to embrace it. Will you do it? How can you gentlemen bring in a verdict of guilty when the foundation stones of this prosecution are composed of perjurers? How can you bring in a verdict of guilty when you see that all the material testimony in this case received its being and was brought to fruition at the hands of conscienceless detectives and other suborners or perjurers?

### BEGS THEM NOT TO ERR.

Two juries have sat upon this case before and have said by their verdicts that I am guilty. This was at a time, gentlemen, when the amount of perjury in this case was not so well known as now; formerly my case was reviewed by a higher court and a new trial granted. Suppose that you should render the same verdict, and suppose I would be compelled to abide by that verdict, and it should be found out after all that I am innocent, and it will be found out; suppose that in the meantime that my frail constitution breaks down under the strain through which I have been forced to go for the past few years; suppose that my vitality is sapped and disease takes possession of my vital forces; suppose that my power of usefulness is all destroyed; suppose that in the meantime that my aged mother could no longer stand the strain of witnessing the awful injuries done her son, and her soul takes its flight for the world of spirits, following that of my poor father, who died but a few months ago. And when the facts surrounding this murder become known, as they will become known, and the world knows that I had nothing more to do with the murder of Senator Goebel than the jury which tried me, or had Mrs. Surratt and others, who were wrongfully convicted for alleged complicity in the assassination of Abraham Lincoln, how can you, gentlemen, live amid the ruin that you have caused? How could you claim as a home the State whose fair name you have tarnished? How could you live in country whose fair name you have disgraced in the committing of judicial murder? How could you look your fellow-men in the face, attend your churches and hear the gospel of justice and humanity and mercy and goodness preached?

Oh, gentlemen, the awful sin of a conviction in this case, if you so far forget yourselves as to commit it, will always be a crushing

weight upon your conscience. It will prey upon you day by day and your slumbers will be disturbed by it at night. In vain will you wander this world around in seeking a place of painless rest. The ghost of your awful crime would be with you to upbraid you with a sense of your dreadful wrong. And when your stay in this world is over; when you have traveled through the dark valley and shadow of death and crossed the barren peaks of eternity, the wrongs that you have done here will follow you and be a witness against you in the great day of judgment, to tell the wrongs and rehearse the agonies you brought to a poor innocent and helpless prisoner here on earth.

But, gentlemen, I believe you are going to do right in this case. You cannot give weight to perjured testimony; you cannot credit men swearing for immunity; and if you are not convinced of my innocence, you cannot be convinced of my guilt. And I believe you are going to give me the full benefit of that which the most remarkable and most mysterious case have left to us all, as you have taken a solemn oath that you would do; and when you do that, gentlemen, I will be acquitted and you will have discharged your duty fully to me and to your conscience and to your God. And when you, gentlemen, are called to give account of your stewardship here upon earth, the deed of your verdict of acquittal in this case will stand by your side and plead, like an angel, trumpet-tongued for your acquittal and your deliverance. You may talk of the ruin of homes brought about by strong drink; talk of the pains and pangs of poverty; talk of forfeited friendships and trusts betrayed; talk of the misery of the witness who has sold his honor for gold or blackened his soul with the awful crime of perjury; but none of these compare in wretchedness with the juror who fails to discharge his duty when the life of a fellow-citizen is involved.

I must soon close. I have done my best to make clear the facts in this case. I know that my words have been weak. I will have to trust to you to do better work. I am not guilty. Something has been said by the prosecution about my lawyers begging for mercy. No, no, Mr. Franklin; no, no, gentlemen of the jury, I am not begging for mercy in this case; I am asking for justice alone at your hands.

But speaking of mercy, calls to my mind the German legend that describes man in his creation. It seems that by that legend that at the time the Almighty decided to make man, He called his attributes, Truth, Justice and Mercy, before Him and questioned them concerning it. To Truth, He said: "Shall we make man?" And Truth answered and said: "Make him not; he will destroy thy statutes." He then turned to Justice and said: "Shall we make man?" And Justice said: "Oh, Father, create him not; he will destroy thy statutes, bring want and misery to light, and bathe his hand in human blood; Father, create him not." And Mercy, kneeling at the throne, answered: "Oh,



create him, Father, and I will follow him, wherever he goes; by his errors he shall learn wisdom, and at last I will bring him back to Thee." And man was created at the behest of Mercy.

And whatever may be said of the other noble attributes of man, there is none that so fills his life and the lives of others with joy while he remains here on earth; none that so prepares him for the great beyond. The angel of mercy stood by the side of Abraham Lincoln in every act of his public and private life, and whispered: "Be merciful, be merciful." And he was merciful.

When Robert E. Lee, the great man and greater statesman that he was, surrendered his army at Appomattox in good faith, he would not let his men go home and keep up a guerrilla warfare. Upon his decision as to what should be done, rested the peace of the South and the future relation of the States. He was a soldier, a patriot, a statesman, and, above all, the nobles handiwork of God, an honest man. He was not blind to his duty by the hot blood of revenge and war still wrangling in the breasts of many Southern gentlemen. He was not moved by the passions and prejudices of the hour. He stood like a stone wall for the ultimate good of the South and the glory of the Union. Upon his shoulders rested the destiny of the Southland, and it took a great man to say to his men: "Go home; resume the vocations of peaceful lives; be as faithful to the Republic as you have been to the Confederacy."

And when certain men wanted Grant to take steps to arrest Lee and charged him with treason, he said in no uncertain tones that Robert E. Lee fought for the South because he thought it his duty; that he was loyal to principle and true to honor and that such accusation should not be made.

Lee and Grant were patriots. They stood upon the sublime heights of manhood and duty. Their judgments were not warped. Their devotion to duty could not be affected by the appeals of partisans. The prosperity and the welfare of our country depended upon noble and God-like action on their part. No particular section of the Union to please, but a country to serve. And, gentlemen, I believe that you will climb the sublime heights of duty in this case, with no set of men to please, but your country to serve.

Men, I must soon close. I am going to leave this case in your hands. I am not guilty of that with which I am charged. The decision of all the juries in all this world; the testimony of all the witnesses in this land cannot make it so. The fact that I am innocent is unchangeable. Some things change and some things never do. You, gentlemen of the jury, and the interested spectators in this court-room are all passing on to the time when your existence will be no more. You will soon have played your part in the great drama of life, and you will soon step from the stage of action over the Rive Styx into

the shadowy realms beyond. All the material things change, but there is one thing that all the witnesses in all this world cannot change, and that all the juries in the world cannot alter, and that is that I am innocent of that with which I am charged. That fact will live to the end of time. It is as changeless as eternity.

### A PLEA FOR HONEST JUDGMENT.

These mad days, these prosecutions, will soon be over. Any temporary advantage that may be given to either political party by a verdict of guilty or a verdict of not guilty will soon pass away. Posterity will judge us by the rightfulness and the wrongfulness of our course and conduct. And I fell, gentlemen, that the angel of justice has been standing upon the very threshold of your hearts since this trial began and saying almost aloud to your consciences: "Do justice to this oppressed young man."

The prosecution expects you, gentlemen, to close your eyes to the facts in this case, and expects you to convict me by reason of your politics and what they have proven against others. You remember, gentlemen, a great deal of the time of this court and your time were occupied in listening to various witnesses proving what others did. It is unfair to you and unfair to me to attempt to have you convict me on the actions of others. I have suffered a great deal, gentlemen; God alone knows how much, but it is not for what I have done, but for what others have done.

You know I have suffered; I have been in prison nearly four years. You gentlemen have been engaged in this trial not quite four weeks. You have been in a kind of prison since that trial began. You have, in a measure, been robbed of your liberty. You have been kept together and had an officer over you; have been forced to stay all together and eat at the same table at the same time and to sleep in the same room. I know that the days have hung heavily on your hands, and that the nights have been long and weary. I know that you have been eager to get back to your homes; been anxious to be with your wives and children. They, too, have been thinking the time long and are keeping eager eyes to see your approach; they will meet you with open arms and tender caresses.

It has been a long time to them since they saw you; it has been a long time to you since you saw them; but how short a time compared with over three years, with twelve months in each year, and each month having thirty long days and thirty long and wetary nights, all alone in a prison cell, with the trash of the earth for your daily companions, and with iron bars and steel walls to mock your very existence. There, in a lonesome cell, filled with foul air and creeping vermin and separated from family and friends, hunted up and stared at by every vulgar curiosity-seeker in the land; classed and treated as a criminal and

branded as an outlaw. Such an existence is a living death; it is a million deaths.

Gen. Reuben Davis, of Mississippi, once said: "A prison cell has horrors for me that the regions of the damned have not. The one is the inhumanity of man to man; the other the just punishment inflicted by an All-wise God for the infraction of His decrees."

And should any of you gentlemen be tempted to render a verdict of guilty, and consign me to a living tomb for life, you should weigh well its consequences, for as has been stated, the first, the middle and the last consideration for a jury is the consequence of their verdict.

### APPEALS IN THE NAME OF HIS MOTHER.

I can see my poor mother now, who was unable, by reason of physical infirmities, to attend this trial. She is sitting in her distant home, with a face sallow, wrinkled and careworn from the responsibilities of life and the worries and troubles caused by the unjust prosecution of her son. With a frail and trembling hand she moves back the white hair from her sorry-ridden brow. She casts her waiting, watery eyes toward the scene of this trial and pleads with you, though far away, to spare her son the burdens of further trials and dishonor. She pleads with you for justice to her son. She begs you not to be frightened away from your plain duty by the cruel invectives heaped upon his head by these gentlemen in the heat of argument. She implores you not to blot out the good name she has earned for her children; not to blacken the name of her home and family by a verdict of guilty; not to bring into disrepute and dishonor the name of her dead husband and his off-spring; not to hold up in shame and blight the fondest hopes of her heart; not to scandalize the evening of her life by throwing at the feet of her son the commission of such an awful offense; when she knows that he could not be guilty of such a deed.

She beseeches you to be led alone in your consideration in this case by the lamplight of duty and not be tempted to outrage yourselves and the innocent by political bias, partisan feeling or party advantage. She begs you not to take her to an early grave in shame and dishonor; not to cut her son down in the days of his youth; not to extinguish the dearest hope of her heart; not to erase every hope of happiness for her and for him; not to bring down her mourning age into a grave of despair; not to take from her that which is dearer than life itself, and put upon her more than she can bear. She asks you not to reward liars, nor put the badges of respectability upon the brow of perjurers by your verdict; not to feed the greed of men upon the life-blood of her son, or upon the vitals of our Commonwealth; not to walk ruthlessly upon broken homes and bodies; not to poison or kill her peace

on earth and blight and ruin her confidence in men; not to murder your own souls and smite your own conscience.

This is the speech my mother makes to you. My words are barren and weak in conveying to you her message, but I have done my best and by your interest in this case you seem to say: "Stop. Speak no more. Let us have this case. Let the work of justice begin, for it has long been delayed. Stop, that we may right this wrong at once. Speak no more, but give us an opportunity to tear the shackles from your limbs; take the pallor of the dungeon from your cheeks, and restore you to health and send you home to your mother's fireside."

And my prayer is, gentlemen, that the Giver of Light may remove the mystery surrounding this case and reveal the truth to you as it is. May He point out to you your duty and give you strength to do it—yes, to liberate the suffering innocent and send an outraged boy back to the country he loves and to the countrymen who love him.

I thank you, gentlemen, for your kind patience and indulgent hearing.

At the close of the speech of Mr. Powers many of the jurors were in tears and there was scarcely a dry eye in the whole court-room. Many Goebel Democrats came to him and expressed their belief in his entire innocence.

Upon the conclusion of Mr. Powers' speech the government's attorney closed the argument for the State. It was then about 9:30 o'clock p. m. The Court directed the jury to retire and make a verdict. The great throng of people in attendance lost none of the interest manifested during the argument of the case and remained in expectation of a verdict. At 10 o'clock p. m. the Court directed that the jury be brought into Court and having been asked if a verdict had been reached, to which the foreman replied in the negative. When Court convened the next morning, the jury was sent out for further deliberation. Time wore slowly. The suspense was finally broken at a little after 11 o'clock, the jury having notified the Court that a verdict had been reached. Mr. Powers was brought into Court. Presently the jurors filed in, handing to the clerk the following verdict: "We, the jury find the defendant guilty and fix his punishment at death." Thus was concluded a criminal trial, lasting more than four weeks, and in which there may be found abundant material for song and story, weird, grotesque and tragic. What the final result in this case may be we are unable to say. That matter addresses itself to the future, to the sense and sound judgement of the Courts of this country.

It can be said, however, of Caleb Powers, that there has come to him during his short life more of shadow and storm than has fallen to the lot of any of his fellow men. And in the end, if all is lost, the fortitude, bravery and courage displayed by this young man throughout this long and bitter struggle will live in the heart and memory of the future generations, and will in some measure be a fitting monument to the errors and passions of men, and in the language of Theodore O'Hara, in his immortal tribute to the soldier dead, it will be said:

"Rest on embalmed and sainted dead  
Dear as the life ye gave  
No impious footsteps shall tread  
The herbage of thy grave.

Nor shall thy memory be forgot  
While fame her record keeps  
And honor points the hallowed spot  
Where valor proudly sleeps."

LLEWELLYN F. SINCLAIR.

GEORGETOWN, KY., Sept. 21, 1903.

## EDITORIAL BY COLONEL BRECKINRIDGE ON THE POWERS VERDICT

The following is an editorial, written for the Morning Herald, by Col. W. C. P. Breckinridge, one of the most resourceful and gifted men of our age. He is a Democrat.

"The military court by whom Mrs. Surratt was condemned to be executed for the assassination of Abraham Lincoln, and the secretary of war who approved that sentence and the President who had it carried out, stand condemned at the bar of the world and posterity as the authors of a judicial murder. If Caleb Powers is hanged this will be the verdict and judgment of the world on those who fabricated the perjured testimony, who suborned the perjurers partly by bribery and partly by promises of immunity and threats of punishment, on those who delivered the testimony and on the tribunals before whom he was tried and by whom he was condemned. The unreasoning prejudice of excited political hate, justifying its verdict by pretending credence in perjured testimony will not control that ultimate verdict of influence that settled judgment.

Caleb Powers committed grave and reprehensible mistakes; it was a grave mistake to induce that body of men to come to Frankfort—but it was not criminal and it was not intended to commit murder. He was intemperate in speech—but so were many thousands of all parties. His acceptance of the pardon and his attempted escape in disguise and with an escort were extremely ill-advised; but neither was criminal, and the unrelenting, implacable and unscrupulous prosecution that he forsook has proven that his judgment of the course his enemies would pursue was correct. The testimony concerning these mistakes has been mostly adroitly and most unscrupulously woven with the perjury of an infamous set of perjured jurors under the guidance of partisan courts have avowed justified conviction.

Truth is often lagard in divesting her fair limbs of the clothing of falsehood, but she does at last appear in her own noble and convincing majesty, and then those who have been deceived will be objects of pity—those who deceived, objects of execration.

Powers was guilty of bringing the mountain men to Frankfort; there was no casual connection between this and the assassination of Goebel. We believe he was innocent of complicity in that crime; but his connection with the one act has been used as a pretense for his conviction of the crime. To whom the rewards will be paid is not

yet known; they have been as well earned as were the historic thirty pieces of silver.

On the floor of the House of Representatives Gen. Butler destroyed the public career and drove into painful exile an eloquent and much applauded counsel and politician. Gen. Brigham: "I decline to yield to him who compassed the murder of an innocent woman." It may be that in the not remote future in the face of some ambitious participator in the prosecution of Caleb Powers a similar retort will be flung."















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